# Official Gazette

## REPUBLIC OF THE PHILIPPINES

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# OFFICIAL WEEK IN REVIEW

***May 21.***—PRESIDENT Garcia today directed Social Welfare Administrator Amparo Villamor to extend immediate relief to some 1,000 families of laborers and vendors who had been rendered jobless as a result of the devastating fire which razed four blocks of business establishments in Binondo last Friday.

The President issued the directive on receipt of a written report from the SWA administrator who undertook a survey of the extend of destruction wrong by the recent conflagration.

On orders of the President, two emergency teams of social workers set up headquarters at the ground floor of a building spared by the fire on Folgueras corner M. de Santos Street to attend on a round the clock basis to fire sufferers. The SWA, however, found difficulties in contacting the fire victims as most of them have homes in the suburbs and come only to the area to work.

Mrs. Villamor informed the President that some 2,000 stores and other big business establishments had been levelled to the ground. She estimated that more than 1,000 families of Filipino workers had been directly affected with the loss of their means of livelihood.

Early this morning the President heard mass at his Bohol Avenue residence in Quezon City. Also at the mass were Mrs. Garcia, Maj. Jose Estrella, junior military aide, and members of the household.

The Chief Executive spent the day quietly at his private residence working on some papers he had brought over from Malacañang. He did not receive any caller.

***May 22.***—PRESIDENT Garcia today discussed with officials of the Committee for American Relief Everywhere (CARE) and members of the Presidential Committee on Rural Information and Education the distribution of more CARE radios to the rural areas in order to fight subersive propaganda and to enlighten and inform the barrio people.

The President was informed by Robert Linder, local CARE chairman, and Defense Undersecretary Mariano Yenko, chairman of the presidential committee, that CARE radios have been distributed already to 1,591 barrios. They emphasized that the goal is to have a radio each in the more than 19,000 barrios of the Philippines.

The conferees evolved plans for the third allocation of 1,000 CARE radios which will soon be delivered to the presidential committee.

The President took the opportunity to express his gratitude to the American people for the donation of the radios which were promised him during his state visit to the United States.

Also present at the conference were Kenneth Schneider, CARE overseas supervisor, PCRIE Vice-Chairman Bernardo G. Silverio, Executive Director Carlos F. Nivera, and Maj. Fajardo Dua.

Meanwhile, President Garcia discussed with Dr. Andres Castillo, acting governor of the Central Bank, the problem of the deferred payments on all imports. They scheduled another conference before the end of the month to decide finally on the ratio of payments.

Castillo explained that to give producers of capital goods who brought equipment and machineries under the deferred payment plan the ₱2 to $1

ratio would practically wipe out the foreign exchange reserves of the Central Bank.

Other callers were Dra. Rafaelita Soriano, Minister Guillermo Sison of the Department of Foreign Affairs, Dr. Maracio Zafra, and Dr. Damaso Samonte.

This afternoon the President administered the oath of office to the newly-appointed presiding justice and three associate justices of the Court of Appeals before a large crowd at the Malacañang reception hall. Inducted by the President were Presiding Justice Querube C. Makalintal and Associate Justices Juan P. Enriquez, Manuel M. Mejia, and Julio Villamor.

In a brief conference following the induction ceremonies, the President told the inductees to mete out justice without fear or favor but with equity and fairness.

The oath-taking ceremonies were witnessed by one of the largest crowds ever assembled in Malacañang to witness such occasions, composed of high government officials, members of the judiciary, representatives of civic organizations, close relatives, and friends of the inductees.

Later in the afternoon the President received Vice-Mayor Mario Ortiz and three members of the City Council of Cebu, who requested approval of H. 5884 and H. 5653, both of which had already been passed by both Houses of Congress.

H. 5884 seeks to change the name "Avellana Vocational High School" to "Avellana National High School" in order to permit the admission of students taking general courses in preparation for higher education.

H. 5653 seeks to update the Cebu City charter by providing for separate superintendent of schools, city engineer, and additional judges and fiscals.

Those who called on the president included Cebu City Councilors Juan C. Zamora, Luis Diores, and Florencio Urot; and Carolino Gandiongco, president of La Suerte Club.

***May 23.***—THIS morning the President discussed ways and means to improve the peace and order situation in Ilocos Sur in an hour long conference with Rep. Faustino Tobia at Malacañang.

One of the remedies discussed at the conference was the disbandment of armed civilian bodyguards of the candidates for Congress regardless of party affiliations.

Rep. Tobia suggested that instead of civilian bodyguards, the Armed Forces of the Philippines assign AFP personnel to insure protection to all candidates in order to avert any untoward incidents up to election time.

"I would like to insure a clean, orderly, and peaceful election in that province," President Garcia stated.

Rep. Tobia informed the President that since the 1957 elections, he had lost more than 200 leaders through violence, blaming politics for their deaths.

By presidential directive, the Department of National Defense was adding more troops to preserve peace and order in Ilocos Sur.

The President also received Rep. Nicanor Eñiguez of Leyte del Sur and a delegation from Sugod Bay and Panaon. He directed Budget Commissioner Faustino Sy-Changco to implement immediately the Sugod Bay Emergency Hospital project at a cost of ₱60,000.

Other presidential callers this morning were Judge Demetrio Vinzon of Leyte, Severo Asuncion, and Rep. Gaudencio Abordo, who accompanied a delegation of Palawan municipal officials to urge implementation of several projects in their respective municipalities

President Garcia was informed today of the mass defection from the Liberal Party into the Nacionalista fold of two large political groups in Zamboanga del Sur and Cotabato.

The Savillano-Nadila-Singano faction in Zamboanga del Sur with 8,000 electoral members, which supported the Liberal Party during the last elections, have formally affiliated with the Garcia Reelection Movement in that province.

This evening the President and Mrs. Garcia motored to the private residence of Finance Secretary Dominador R. Aytona to felicitate the latter on the occasion of his 43rd birthday.

Earlier the President clarified his press statement to the *Associated Press* that he was leaving the choice of the vice-presidential nominee to the Nacionalista Party convention.

This was to assuage the ruffled feelings of other vice-presidential aspirants after the President was quoted by the "AP" that he believes that Secretary Aytona and Senator Gil J. Puyat were the two strongest contenders for the NP vice-presidential nomination.

***May 24.***—PRESIDENT and Mrs. Garcia today were swamped with messages of congratulations coming from friends and relatives from all parts of the country on the occasion of their 28th wedding anniversary.

Well-wishers flocked to Malacañang to extend their congratulations personally to the First Couple of the land.

The simple celebration started with mass at the Malacañang chapel, with President and Mrs. Garcia receiving Holy Communion, following an old Filipino customs. Then followed breakfast at the family dining hall, where the President presented Mrs. Garcia with a gift consisting of a chain of amethyst and gold.

Among the well-wishers who called personally on the First Couple were Speaker and Mrs. Daniel Z. Romualdez, Foreign Affairs Secretary and Mrs. Felixberto Serrano, Defense Secretary and Mrs. Alejo Santos, Executive Secretary and Mrs. Natalio P. Castillo, Finance Secretary and Mrs. Dominador Aytona, SWA Administrator Amparo Villamor, Commerce Secretary Manuel Lim, Sen. and Mrs. Gil J. Puyat, Rep. and Mrs. Bartolome Cabangbang, Rep. Manuel Zosa, Lt. Gen. and Mrs. Manuel Cabal, Assistant Executive Secretary and Mrs. Enrique C. Quema; Mrs. Esperanza Osmeña, Mrs. Rosie Osmeña-Valencia, Mrs. Quintin Paredes, Mrs. Lorenzo Sumulong, Justice Natividad Almeda Lopez, Mrs. Lita Roces, Mrs. Milagros Sumulong; Rodolfo Andal, Gov. Tomas Martin of Bulacan, J. J. Carlos, Marcelo Balatbat, Judge Milagros German, Antonio Assad; Mrs. Ester Aldeguer, Miss Helen Benitez, Mr. and Mrs. Niño Ramirez, Gregorio Licaros, Teofilo Zosa, and Jose Fernandez.

At noon President and Mrs. Garcia tendered a luncheon at Malacañang in honor of Gen. Richard King Mellon, chairman of the Board of Directors of the Mellon National Bank and Trust Company and director of the Gulf Oil Company, and William L. Whiteford, Gulf Oil board chairman, and their ladies.

Officials of the Filoil Refinery Corporation and their ladies, and Gulf Oil officials in the Far East and the Philippines were also invited.

The guest list included Filemon Rodriguez, Mr. and Mrs. Ramon V. del Rosario, Mr. and Mrs. Carlos Palanca, Jr., and Herb Goodman, James Lee.

This afternoon the Cabinet directed the National Economic Council to "review" its position on the rice supply in the country and see if it could certify to the lack of the commodity.

The order was decided upon after President Garcia informed the Cabinet that he had been receiving "many and insistent" suggestions to import rice to curb the rising price of the staple.

At the last Cabinet meeting, a special legislative-executive committee headed by Sen. Gil Puyat had urged the importation of rice to bring down the price of the commodity. But the N.E.C. put its foot down on the proposal.

Under the provisions of Republic Act 2207, rice may be imported only if the N.E.C. certified to the existence of an actual or an impending shortage.

The Cabinet asked the N.E.C. to meet today to review its data on the rice supply. It directed the Council to make its report today, if possible, before the President leaves for Talibon, Bohol.

If this was not possible, the Cabinet told the N.E.C., the report should be submitted to the President upon his return early next week.

The Cabinet asked the council to go anew over the supply, the surplus from last year's harvest, and the rice requirement.

***May 25.***—PRESIDENT Garcia this morning directed Budget Commissioner Faustino Sy-Changco to release immediately the sum of ₱40,000 from his contingent funds for the relief of the victims of calamities in Manila and four provinces.

The directive was given by the Chief Executive through Executive Secretary Natalio P. Castillo in Malacañang shortly before he and the First Lady boarded the *RPS Lapu-Lapu* for Bohol to attend the annual fiesta of Talibon, the President's hometown.

The bulk of the aid in the amount of ₱20,000 will be for the victims of the fire which gutted four blocks of commercial establishments and residential houses in Binondo, Manila, on May 19.

The release of the other sum of ₱20,000 was ordered by the President after representations made by Social Welfare Administrator Amparo Villamor for the relief of the fire and starvation victims in Antique, Aklan, Lanao del Norte, and Negros Occidental.

Earlier this morning, President Garcia was informed by Sen. Alejandro Almendras that Rep. Fausto Dugenio was proclaimed official candidate of the Nacionalista Party for the lone congressional seat of Misamis Oriental.

The Senator from Davao, who was the keynote speaker at the provincial NP convention held yesterday, also informed President Garcia that 19 out of the 23 municipal mayors had pledged to support the Chief Executive's reelection bid.

The President administered the oath of affiliation as card-bearing members of the Nacionalista Party to Lt. Col. Felicisimo D. Reyta of the Antipolo Veterans Legion and to Sofronio M. Sian, director of the Cereal Millers Association for President Garcia's Reelection, in the presence of Maj. Francisco Datol and Gregorio E. Cruz, Jr.

The President today designated the period from June 1 to July 15 for the 13th annual educational and fund campaign of the Community Chest.

In issuing the proclamation the President called on the people to support the campaign and to give generously to the Community Chest which unites into one annual appeal the fund campaigns of the following civic organizations: Abiertas House of Friendship, American-Philippine Guardian, Asilo de Sen Vicente de Paul, Associacion de Damas Filipinas, Catholic Youth Organization, Council of Welfare Agencies, Free Legal Aid Clinic, Girl Scouts of the Philippines, Good Shephard Convent, La Proteccion de la Infancia, National Federation of Women's Clubs, Free Medical Clinics, Philippine Association of the Deaf, Philippine Band of Mercy, Philippine Mental Health Association, Young Men's Christian Association, and the Young Women's Christian Association.

The President authorized all government officials and employees, including school authorities and teachers, to accept contributions for the Community Chest and urged them to give the campaign full support and dedicated leadership in their respective communities.

President Garcia also created today a national committee that will take charge of the 15th anniversary celebration of Philippine Independence this coming July 4.

The committee which will formulate plans and devise ways and means, as well as prepare the program for this year's celebration, will have the Education Secretary as chairman and the Secretary of National Defense as vice-chairman.

For the purpose of discharging its functions, the committee was empowered to create such sub-committees as may be necessary.

Designated members of the committee are the following:

The Secretaries of Labor and Health, the Administrator of Economic Coordination, the Commissioner on Tourism, the Presidential Press Secre-

tary, the Governor of the Central Bank, the Chairman of the Development Bank of the Philippines; the presidents of the Philippine National Bank, Philippine Association of Colleges and Universities, Chamber of Commerce of the Philippines, Philippine Chamber of Industries, Chamber of Agriculture and Natural Resources, Bankers Association of the Philippines, Manila Rotary Club, Manila Junior Chamber of Commerce, Lions Club of Manila, National Press Club of the Philippines, Civic Assembly of Women of the Philippines; the National Commander of the Veterans Federation of the Philippines, and the Cabinet Secretary, who will also act as secretary of the committee.

***May 26.***—PRESIDENT and Mrs. Garcia arrived in Talibon, Bohol, this afternoon to pay their annual traditional homage to Santa Purisima Trinidad, the town's patron saint, on the occasion of the fiesta of Talibon, President Garcia's hometown.

The Chief Executive pays homage to the saint every year during the town fiesta. So far he has missed fulfulling his vow only once, when he was attending the Geneva conference as vice-president and foreign affairs secretary.

The President and the First Lady, with children Mr. and Mrs. Fernando Campos, together with Gen. Manuel F. Cabal and a party of Manila newspapermen, arrived at Talibon at 4:30 p.m. after a rough uneventful journey aboard *RPS Lapu-Lapu.*

Two kilometers offshore, the party was met by colorful fluvial parade, while at the wharf townsfolk who had gathered *en masse,* led by Rep. and Mrs. Maximino Garcia and Mayor and Mrs. Lazaro Ibardo, gave the favorite son a rousing welcome.

From the pier President Garcia proceeded to church to hear mass after which he attended the procession around the town.

In the evening the President and the First Lady were dinner guests of Rep. and Mrs. Garcia.

This morning President Garcia had a chance to chat with newsmen aboard the *Lapu-Lapu.* He spent two hours talking about the coming convention with them.

***May 27.***—THIS morning the President, the First Lady, their daughter Linda, and her husband Fernando Campos, heard a pontifical mass said by Bishop Manuel Mascarinas of Tagbilaran assisted by parish priests of neighboring towns.

After the mass the family had breakfast at the Talibon convent from which the President proceeded to the Talibon town hall to address the seminar of Bohol police chiefs.

President Garcia renewed his appeal for free and clean elections before 35 chiefs of police of Bohol at the Talibon town hall.

The President also appealed to the police chiefs to wage an information drive against illegal fishing, and to set up units to guard fishing grounds.

The President had lunch at the house of Mayor Evardos of Talibon where he met old acquaintances.

The President with the First Lady later visited his 96-year-old uncle, Alipio Garcia, at the Talibon Emergency Hospital before boarding the *Lapu-Lapu* for Manila. The yacht left Talibon at 3 o'clock this afternoon.

Since he was informed of the latest political developments in the morning, the President has appeared unperturbed by reports that Senate President Rodriguez, his NP political rival, would release another expose on graft and corruption preparatory to holding a rump convention to nominate him (Amang) as presidential candidate.

# EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 753

## DECLARING THE THIRD WEEK OF MAY, 1961, AS PHILIPPINE HIGHWAY WEEK

WHEREAS, it is necessary to bring to the people's attention the importance of roads and highways to the national economy;

NOW, THEREFORE, I, Carlos P. Garcia, President of the Philippines, do hereby declare the third week of May, 1961, as Philippine Highway Week and designate the Secretary of Public Works and Communications, the Commissioner of Public Highways and the Philippine Better Roads Association to take charge of all arrangements and activities for its fitting celebration throughout the Philippines.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 17th day of May, in the year of Our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the fifteenth.

[SEAL]

CARLOS P. GARCIA
*President of the Philippines*

By the President:

NATALIO P. CASTILLO
*Executive Secretary*

016302

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 349

## CREATING A NATIONAL COMMITTEE TO TAKE CHARGE OF THE FIFTEENTH ANNIVERSARY CELEBRATION OF THE REPUBLIC OF THE PHILIPPINES ON JULY 4, 1961

Pursuant to the powers vested in me by law, I, Carlos P. Garcia, President of the Philippines, do hereby create a National Committee to formulate plans and devise ways and means and prepare the program for a fitting celebration of the fifteenth Anniversary of Philippine Independence next July 4, 1961.

The Committee shall be composed of the following:

| | |
|---|---|
| The Secretary of Education | Chairman |
| The Secretary of National Defense | Vice-Chairman |
| The Secretary of Labor | Member |
| The Secretary of Health | Member |
| The Administrator of Economic Coordination | Member |
| The Commissioner on Tourism | Member |
| The Malacañang Press Secretary | Member |
| The Governor, Central Bank of the Philippines | Member |
| The Chairman, Development Bank of the Philippines | Member |
| The President, Philippine National Bank | Member |
| The President, Philippine Association of Colleges and Universities (PACU) | Member |
| The National Commander, Veterans Federation of the Philippines | Member |
| The President, Chamber of Commerce of the Philippines | Member |
| The President, Philippine Chamber of Industries | Member |
| The President, Chamber of Agriculture and Natural Resources | Member |
| The President, Bankers Association of the Philippines | Member |
| The President, Manila Rotary Club | Member |
| The President, Manila Junior Chamber of Commerce | Member |
| The President, Lions Club of Manila | Member |
| The President, National Press Club of the Philippines | Member |
| The President, Civic Assembly of Women of the Philippines | Member |
| The Cabinet Secretary, Malacañang | Member-Secretary |

The Committee shall meet at the call of the Chairman and, for the purpose of discharging its functions, may create such sub-committees as may be necessary.

Done in the City of Manila, this 12th day of May, in the year of our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the fifteenth.

CARLOS P. GARCIA
*President of the Philippines*

By the President:

NATALIO P. CASTILLO
*Executive Secretary*

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MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 350

AUTHORIZING THE FILIPINO MERCHANTS' INSURANCE CO., INC., TO BECOME A SURETY UPON OFFICIAL RECOGNIZANCES, STIPULATIONS, BONDS, AND UNDERTAKINGS

WHEREAS, section 1 of Act No. 536, as amended by Act No. 2206, provides that whenever any recognizance, stipulation, bond, or undertaking conditioned for the faithful performance of any duty or of any contract made with any public authority, national, provincial, municipal, or otherwise, or of any undertaking, or for doing or refraining from doing anything in such recognizance, stipulation, bond, or undertaking specified, is, by the laws of the Philippines or by the regulations or resolutions of any public authority therein, required or permitted to be given with one surety or with two or more sureties, the execution of the same or the guaranteeing of the performance of the condition thereof shall be sufficient when executed or guaranteed solely by any corporation organized under the laws of the Philippines, having power to guarantee the fidelity of persons holding positions of public or private trust and to execute and guarantee bonds or undertakings in judicial proceedings and to agree to the faithful performance of any contract or undertaking made with any public authority;

WHEREAS, said section further provides that no head of department, court, judge, officer, board, or body, whether executive, legislative, or judicial, shall approve or accept any corporation as surety on any recognizance, stipulation, bond, contract, or undertaking unless such corporation has been authorized to do business in the Philippines in accordance with the provisions of said Act No. 536, as

amended, nor unless such corporation has, by contract with the Government of the Philippines, been authorized to become a surety upon official recognizances, stipulations, bonds, and undertakings; and

WHEREAS, the Filipino Merchants' Insurance Co., Inc., is a domestic corporation organized and existing under the laws of the Republic of the Philippines and fulfills the conditions prescribed by said Act No. 536, as amended.

NOW, THEREFORE, I, Carlos P. Garcia, President of the Philippines, by virtue of the powers vested in me by law, do hereby authorize the Filipino Merchants' Insurance Co., Inc., to become a surety upon official recognizances, stipulations, bonds, and undertakings in such manner and under such conditions as are provided by law, subject to the condition that the total amount of immigration bonds that it may issue shall not, at any time, exceed its admitted assets.

Done in the City of Manila, this 13th day of May, in the year of Our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the fifteenth.

CARLOS P. GARCIA
*President of the Philippines*

By the President:

NATALIO P. CASTILLO
*Executive Secretary*

# REPUBLIC ACTS

**Enacted during the Fourth Congress of the Philippines**
**Third Session**

**H. No. 4652**

[REPUBLIC ACT No. 3011]

## AN ACT GRANTING FRANCHISE FOR ELECTRIC LIGHT, HEAT AND POWER SYSTEM TO EACH OF THE MUNICIPALITIES OF CALAMBA, LOS BAÑOS, BAY, VICTORIA, PILA AND ALAMINOS, ALL IN THE PROVINCE OF LAGUNA.

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

SECTION 1. *Declaration of policy.*—It is declared to be the policy of the Republic of the Philippines.

(1) To furnish cheap dependable electric power and facilities in order to promote and accelerate the agricultural and industrial development of the country;

(2) To provide as much as possible a uniform rate of electricity throughout the country; and

(3) To provide the people of the Philippines with electric light, heat and power system.

SEC. 2. *Laws, terms and conditions applicable.*—Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended, as well as to the provisions of the Constitution and this Act there is hereby granted to each of the municipalities of Calamba, Los Baños, Bay, Victoria, Pila and Alaminos, all in the Province of Laguna, for a period of twenty-five years from the approval of this Act, the right, privilege and authority to construct, maintain and operate an electric light, heat and power system for the purpose of generating, transmitting and distributing electric light, heat and/or power for sale.

SEC. 3. Each of the grantees herein, alone or jointly with others or with any municipality in the Philippines, may make arrangement to enable them to purchase economically electric power or to produce electric power.

SEC. 4. *Rate of electricity.—Limit of net profit.*—The rates for electricity shall be fixed so that the grantee obtains a profit of not more than six *per centum per annum* of the rate base as defined herein: *Provided,* That the Public Service Commission shall approve or modify the rates submitted for approval within one month after the filing of the application therefor: *Provided, further,* That the grantee which shall have reported profits in excess of six *per centum per annum* for the first year of its operation shall effect immediate reduction in its existing rates by a percentage which the reported profits in excess of six *per centum per annum* bear to the reported revenue in that year: *Provided, further,* That during each succeeding years, the grantee reporting profits still in excess of six *per centum per annum,* notwithstanding the rate reduction of the immediately preceding year, shall effect reduction

in rates by a percentage which the reported profits in excess of six *per centum per annum* during the preceding year bear to the reported revenue of the same year, such reduction to be made not later than April first of each year retroactive to January first of the same year: *Provided, further,* That where the applicable reduction to customers will mean less than one *per centum* reduction in the prevailing rates or will include such a fraction, no reduction in rates shall be made to the extent of such fraction but such amount shall be placed in a special fund of the grantee available only for the improvement and expansion of the system: *Provided, further,* That the reduction to be effected by the grantee in accordance with the next preceding proviso shall not be conclusive but may be further increased at such rates as shall be found justifiable in the verification that shall be undertaken by the Public Service Commission, with the cooperation of the General Auditing Office and such other agencies of the Government as the President may designate, of the rate base of the revenue, and of the operating expenses: *Provided, further,* That any violation of any provision of this section, including inflation of the rate base, padding of operating expense, and understatement of revenue, shall be penalized with dismissal from the service, and by imprisonment for not less than one year and not more than five years, of the public officers and employees responsible for the violation, without prejudice to the civil liability of the grantee concerned to the consumers in double the amount of the overcharge plus attorneys fees and costs of litigation, which liability may be enforced independently of the criminal action arising from the same act. The net profit obtained by the grantee shall not be used for any purpose other than the improvement and expansion of the system.

SEC. 5. *Records of assets, liabilities, capital, income, etc.*—The grantee shall make and keep complete records of its assets, liabilities, capital, revenue, expenses, income, and operations in accordance with a detailed system of accounts which shall embody the cost principle as defined in Section seven hereof, and which shall be prescribed by the Public Service Commission or its legal successor, and such accounting system shall conform to the system approved by the Auditor General. The grantee shall account for retirements or replacements of, or additions to, its property according to classified list of units of property which the Public Service Commission or its legal successor shall prescribe. Until the Public Service Commission or its legal successor prescribes the aforementioned list of units of property, the grantee may adopt its own list of property which it shall submit to the Public Service Commission or its legal successor for approval.

SEC. 6. *Record of amount of depreciation of depreciable property.*—The grantee shall record in its accounts at the end of each month the estimated amount of depreciation of every depreciable property for that month computed according to the straight-line method, as defined in Section seven hereof. In estimating such accrued depreciation the grantee shall use its own judgment as to the estimated service lievs and depreciation rates of its depreciable prop-

erty which it shall submit to the Public Service Commission or its legal successor for approval, until such time as the Public Service Commission or its legal successor fixes the service lives and depreciation rates which the grantee shall be required to use thereafter.

SEC. 7. *Definition of terms.*—For purposes of this Act, the following terms are defined as follows:

"Cost" means the amount of money actually paid for property or services or their cash value at the time of the transaction.

"Units of property" means those items of property which when retired, with or without replacement, are accounted for by crediting the book cost thereof to the property account in which included.

"Straight-line method" of depreciation means the spreading of depreciation of depreciable property in equal amounts monthly over its estimated service life.

"Rate base" means the money honestly and prudently invested in the used and useful property and equipment less accrued depreciation plus one-twelfth of the annual cash operating expenses as working capital.

SEC. 8. *Limit of operating expenses, quality of service.*—The grantee shall abide by the limit of operating expenses that the Public Service Commission or its legal successor may impose and shall comply with the safety rules and render the quality of service which said Commission may prescribe.

SEC. 9. *Power to borrow from government banking institutions.*—In order to finance its projects, the grantee is empowered to borrow from any financial institution or incur indebtedness in excess of its borrowing capacity, notwithstanding any provision of law to the contrary.

SEC. 10. *Administration of franchise on non-partisan basis.*—The franchise granted shall be administered entirely on a non-partisan basis, and in the appointment of officials, selection of employees and promotion of any such officials or employees, no political test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be given and made on the basis of merit and efficiency. The benefits of this franchise shall be made available without discrimination to any person, group or association, irrespective of color, race, creed, religion or political party. No public official or employee of each of the municipal governments shall abet, tolerate or encourage discriminatory and unlawful services or practices. Electric services shall be cut automatically upon failure of the consumer to pay two successive monthly bills. No public official or employee shall be in any manner, directly or indirectly, interested in any contract with reference to any matter concerning this franchise, or to profit out of this franchise, except to enjoy the consumer's rights and benefits.

SEC. 11. *Right of national government to acquire grantee's property.*—It is expressly provided that in the event the national government should desire to maintain and operate for itself the system and enterprise herein authorized, the grantee shall surrender its franchise and turn over to the national government all serviceable

equipment therein, and the national government shall pay the grantee its original investment and/or assume all the obligations of the grantee to finance the system.

SEC. 12. *Penal Provisions.*—Any public officer or employee found directly or indirectly responsible for the use of the net profit of the grantee for any purpose other than the improvement and expansion of the system shall be punished by a fine of not more than five thousand pesos or imprisonment for not more than two years, or both.

Any public officer or employee found directly or indirectly responsible for the violation of Section ten of this Act or any such officer or employee who, having known such violation, fails to report the same to the justice of the peace, shall be punished with dismissal from the office and by imprisonment for not less than one year and not more than five years.

Nothing in this section shall be construed to relieve or exempt the grantee from complying with the provisions of other laws relating to franchises.

SEC. 13. *Repeal or modification of other laws, executive orders, etc.*—All laws or parts of laws and all executive orders, rules and regulations or parts thereof inconsistent with the provisions of this Act are repealed or modified accordingly.

SEC. 14. *Separability clause.*—If any provision of this Act or the application of such provision to any person or circumstance is declared invalid, the remainder of the Act or the application of such provision to other persons or circumstances shall not be affected by such declaration.

SEC. 15. *Effectivity clause.*—This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

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H. No. 5000

[REPUBLIC ACT No. 3012]

AN ACT TO AMEND HEADING 73.14, CHAPTER 73, SCHEDULE XV, SECTION ONE HUNDRED FOUR OF REPUBLIC ACT NUMBERED NINETEEN HUNDRED THIRTY-SEVEN, OTHERWISE KNOWN AS THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES.

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

SECTION 1. Heading 73.14, Chapter 73, Schedule XV, Section one hundred four of Republic Act Numbered Nineteen hundred thirty-seven is amended to read as follows:

"73.14. Iron or Steel Wire, single strand, with—

| | | |
|---|---|---|
| *a.* cross-sectional dimension of 5.5mm to 6.5mm | *ad val.* | 10% |
| *b.* cross-sectional dimension of 1.65mm to 5.49mm | *ad val.* | 75% |
| or G.W., 100 kg. | | ₱16.00 |
| *c.* other | *ad val.* | 15% |
| *d.* coated but not insulated | *ad val.* | 15%" |

SEC. 2. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 1181

[REPUBLIC ACT No. 3013]

AN ACT GRANTING THE GAPAN ELECTRIC CORPORATION A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITIES OF GAPAN AND SAN ISIDRO, PROVINCE OF NUEVA ECIJA.

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to the Gapan Electric Corporation, for a period of fifty years from the approval of this Act, the right, privilege, and authority to construct, maintain and operate an electric light, heat and power system for the purpose of generating and distributing electric light, heat and/or power for sale within the municipalities of Gapan and San Isidro, Province of Nueva Ecija.

SEC. 2. In the event that the grantee shall purchase and secure from the National Power Corporation electric heat and power, the National Power Corporation is hereby authorized to negotiate and transact for the benefit and in behalf of the public consumers with reference to rates.

SEC. 3. This franchise is granted on the express condition that the grantee will comply, upon approval thereof, with his commitment to reduce the rates according to the schedule hereinbelow stated, and that the said rates shall be maintained unless for well founded reasons. After two years, a change may be authorized by the Public Service Commission: *Provided, however,* That the Commission may approve any change, at any time, if the purpose is to further reduce said rates.

*Schedule of Rates per Month*

| | | |
|---|---|---|
| For the first fifteen KWH ..... | ₱5.00 | (minimum); |
| Next eighty-five KWH ..... | .27 | per KWH; |
| Over one hundred KWH ..... | .23 | per KWH. |

SEC. 4. It is expressly provided that, in the event the Government should desire to maintain and operate for itself the system and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the Government all serviceable equipment therein at cost, less reasonable depreciation.

SEC. 5. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

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H. No. 1757

[REPUBLIC ACT No. 3014]

AN ACT GRANTING ROMULO V. RAMOS A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITIES OF

STA. CRUZ, DIGOS, BANSALAN, PADADA, MALALAG, HAGONOY AND LOWER MATANAO, ALL IN DAVAO PROVINCE.

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to Romulo V. Ramos, for a period of fifty years from the approval of this Act, the right, privilege, and authority to construct, maintain and operate an electric light, heat and power system for the purpose of generating and distributing electric light, heat and/or power for sale within the limits of the municipalities of Sta. Cruz, Digos, Bansalan, Padada, Malalag, Hagonoy and Lower Matanao, all in Davao Province.

SEC. 2. In the event that the grantee shall purchase and secure from the National Power Corporation electric heat and power, the National Power Corporation is hereby authorized to negotiate and transact for the benefit and in behalf of the public consumers with reference to rates.

SEC. 3. The grantee is hereby authorized to organize a corporation to which he is empowered to sell or assign this franchise, but thereafter the said corporation shall neither lease, transfer, grant the usufruct of, sell or assign this franchise and the rights and privileges acquired thereunder, to any person, firm, company, corporation or other commercial or legal entity, nor merge with any other company or corporation organized for the same purpose without first securing the approval of the Congress of the Philippines. Any corporation to which this franchise may be sold, transferred or assigned shall be subject to the corporation laws of the Philippines now existing or which may hereafter be enacted, and any person, firm, company, corporation or other commercial or legal entity to which this franchise is sold, transferred or assigned shall be subject to all the conditions, terms, restrictions and limitations of this franchise as fully and completely and to the same extent as if the franchise had been originally granted to the said person, firm, company, corporation or other commercial or legal entity.

SEC. 4. In consideration of the franchise and rights hereby granted, the grantee shall pay into the Treasury of the Philippines a franchise tax equal to two *per centum* of the gross earnings for electric current sold under this franchise.

SEC. 5. It is expressly provided that in the event the Government should desire to maintain and operate for itself the system and enterprise herein authorized, the grantee shall surrender this franchise and will turn over to the Government all serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 6. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

H. No. 2565

[REPUBLIC ACT No. 3015]

AN ACT GRANTING RETIRED OFFICERS AND ENLISTED MEN OF THE PHILIPPINE CONSTABULARY THE SAME RIGHTS AND PRIVILEGES ENJOYED BY RETIRED OFFICERS AND ENLISTED MEN OF THE PHILIPPINE ARMY UNDER REPUBLIC ACT NUMBERED THREE HUNDRED AND FORTY, AS AMENDED, AND AUTHORIZING THE APPROPRIATION OF THE NECESSARY FUNDS THEREFOR.

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

SECTION 1. All the benefits granted under Republic Act Numbered Three hundred forty, which provides for a uniform retirement system for the Armed Forces of the Philippines, to provide for separation therefrom and for other purposes, shall be applicable to the officers and enlisted men of the Philippine Constabulary who had been retired from active service before the approval of the said Republic Act Numbered Three hundred and forty, to the end that said retired officers and enlisted men of the Philippine Constabulary shall enjoy the same rights and privileges thereunder granted to the Armed Forces of the Philippines.

SEC. 2. The sum of fifty thousand pesos is hereby authorized to be appropriated and made available for carrying out the aims and purposes of this Act.

SEC. 3. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

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H. No. 4575

[REPUBLIC ACT No. 3016]

AN ACT TO PROVIDE GRATUITY FOR THE GOVERNOR OF THE CENTRAL BANK OF THE PHILIPPINES.

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

SECTION 1. When the Governor of the Central Bank of the Philippines retires from the service after having completed his term of office or by reason of his incapacity to discharge the duties of his office, or dies while in the service, or resigns upon reaching the age of sixty years, he or his heirs shall be paid in lump sum his salary for five years: *Provided,* That at the time of said retirement, death or resignation, he has rendered not less than twenty years of service in the government.

SEC. 2. When the Governor of the Central Bank of the Philippines takes advantage of the provisions of this Act, he shall not be entitled to retire under Republic Act Numbered Six hundred and sixty, as amended, nor under any other retirement Act, but shall be entitled to the refund of his personal share in the retirement premiums paid to the Government Service Insurance System with the usual

interest granted by the System. The benefits granted under this Act shall be without prejudice to the officer receiving the life insurance benefits from the System to which said officer may be entitled.

SEC. 3. The benefits herein granted shall be exempt from all taxes and shall not be liable to garnishment, levy or execution.

SEC. 4. The Central Bank is hereby authorized to pay out of its funds the sum necessary to carry out the provisions of this Act.

SEC. 5. This Act shall take effect upon its approval.

Enacted without Executive approval, June 19, 1960.

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H. No. 5026

[REPUBLIC ACT No. 3017]

## AN ACT AMENDING SECTION TWELVE OF ACT NUMBERED FORTY-ONE HUNDRED AND SIXTY-SIX, AS AMENDED, OTHERWISE KNOWN AS THE SUGAR LIMITATION LAW.

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

SECTION 1. Section twelve of Act Numbered Forty-one hundred and sixty-six, as amended, is further amended to read as follows:

"SEC. 12. The Sugar Quota Administrator, jointly with the representative of the National Federation of Sugarcane Planters and the representative of the Philippine Sugar Association for a term of three years to be appointed by the President of the Philippines with the consent of the Commission on Appointments, is hereby authorized to issue rules and regulations governing the issuance of allotments and licenses and such other rules and regulations as he may consider necessary for the carrying out of the purpose of this Act. Such rules and regulations and any modifications thereof or amendments thereto shall have the same force and effect as if originally forming a part of this Act: *Provided, however,* That the term of office of the representatives of the sugar planters and/or sugar millers shall be terminated by the President of the Philippines upon recommendation of their respective associations on the ground that they have lost confidence in their representatives. In case of any disagreement among the Sugar Quota Administrator, the representative of the National Federation of Sugarcane Planters, and the representative of the Philippine Sugar Association, then such case shall be immediately forwarded to the Secretary of Commerce and Industry for decision, without prejudice to an appeal to the Office of the President of the Philippines whose decision shall be final."

SEC. 2. All Acts, executive orders and rules or regulations inconsistent with the provisions of this Act, are hereby repealed or modified accordingly.

SEC. 3. This Act shall take effect upon its approval.

Approved, July 26, 1960.

S. No. 574

[REPUBLIC ACT No. 3018]

# AN ACT LIMITING THE RIGHT TO ENGAGE IN THE RICE AND CORN INDUSTRY TO CITIZENS OF THE PHILIPPINES, AND FOR OTHER PURPOSES.

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

SECTION 1. No person who is not a citizen of the Philippines, or association, partnership or corporation, the capital or capital stock of which is not wholly owned by citizens of the Philippines, shall directly or indirectly engage in the rice and/or corn industry except as provided in Section three of this Act.

As used in this Act, the term "rice and/or corn industry" shall mean and include the culture, milling, warehousing, transporting, exportation, importation, handling the distribution, either in wholesale or retail, the provisions of Republic Act Numbered Eleven hundred and eighty to the contrary notwithstanding, or the acquisition for the purpose of trade of rice (husked or unhusked) or corn and the by-products thereof: *Provided,* That public utilities duly licensed and registered in accordance with law may transport corn or rice.

SEC. 2. Within sixty days from the date of approval of this Act, all persons who are not citizens of the Philippines and associations, partnerships or corporations the capital or capital stock of which is not wholly owned by citizens of the Philippines, engaged and duly licensed to engage in the rice and/or corn industry as of the date of approval of this Act shall register and file under oath with the city or municipal treasurer of the place where they reside or have their principal office a verified statement in quadruplicate containing the names, addresses and nationality of the owners, partners or stockholders, the amount of their assets, the nature and the amount of their investments, the names of their principal officials and such other related matters as may be prescribed by the Secretary of Finance.

Copies of said statement shall be sent to the provincial treasurer and the Secretary of Finance.

SEC. 3. All such persons, associations, partnerships, or corporations that have complied with the requirements provided in Section two hereof, if they so apply, shall be allowed to continue to engage in their respective lines of activity in the rice and/or corn industry only for the purpose of liquidation, as follows:

(*a*) Those engaged in the retail, wholesale, culture, transportation, handling, distribution or acquisition for the purpose of trade of rice and/or corn and the by-products thereof shall be allowed to continue to engage therein for a period of two years from the date of effectivity of this Act; and

(*b*) Those engaged in the milling and/or warehousing of rice and/or corn and the by-products thereof shall be allowed to continue to engage therein for a period of three years from the date of effectivity of this Act:

*Provided,* That upon the termination of the periods above-provided none of said alien persons or entities shall

be allowed and granted a license to engage in the rice and/or corn industry: *Provided, further,* That the maximum amount of capital investments of said alien persons or entities in their respective lines of activity in the industry shall be pegged to the amount of capital investments required to be declared under Section two hereof: *Provided, finally,* That after the date of approval of this Act no license to engage in the rice and/or corn industry in any field of activity shall be granted to any new alien applicant therefor.

The license to any alien to engage in the rice and/or corn industry as above-provided shall be forfeited for any violation of any provision of laws, rules, or regulations issued pursuant thereto on economic control, nationalization, monetary, foreign exchange, taxation, health, weights and measures, labor and other laws relating to trade, commerce and industry.

Failure of any alien to renew a license for any year within the periods above-provided shall mean voluntary retirement and shall bar renewal thereof.

SEC. 4. For the purpose of this Act, the Development Bank of the Philippines shall set aside an adequate revolving fund for loan of at least fifty million pesos, which shall be lent to Filipinos with interest of not more than seven per cent *per annum* against secured collaterals for milling, processing, warehousing, and marketing of rice and/or corn: *Provided,* That rice mills or warehouses, after evaluation by the lending banks, may also be included and allowed as collateral for corresponding loans extended to Filipinos who may wish to construct or purchase rice-mills or warehouses.

Likewise, the Philippine National Bank shall set aside a similar adequate revolving loan fund of at least fifty million pesos for cultivation and production, including crop loans, and quedans which shall be lent to Filipinos with interest of not more than six per cent *per annum* against secured collaterals: *Provided,* That the Central Bank shall rediscount the commercial papers covering the loans contemplated in this section at the lowest possible rate in order to insure the maintenance of financial assistance to the rice and/or corn industry: *Provided, further,* That FaCoMas and other cooperatives, individual farmers, small landowners and tenants engaged in the production of palay, rice and/or corn shall be given priority in the grant of such loans.

Producers or planters of rice and/or corn shall be allowed to organize, any provisions of law to the contrary notwithstanding, irrespective of whether or not there may be any existing FaCoMas or farmers cooperative association in their places of business and as duly organized associations shall likewise be entitled to the credit facilities that shall be available from the Development Bank of the Philippines and the Philippine National Bank therein contemplated: *Provided,* That the said associations of producers or planters of rice and/or corn shall not be entitled to the credit facilities provided for in Republic Act Numbered Eight hundred and twenty-one: *Provided, further,* That in areas where established FaCoMas cannot efficiently or fully take care of the volume of operations in the rice and/or corn production and/or marketing, as

certified to that effect by the Agricultural Credit and Cooperative Financing Administration, the organization of another FaCoMa may be authorized, which FaCoMa shall likewise be entitled to all the rights and privileges provided for in Republic Act Numbered Eight hundred twenty-one.

SEC. 5. There is hereby created a board, which shall be known as the Rice and Corn Board, hereinafter called the Board, which shall administer the provisions of this Act and shall study and recommend measures for the improvement and development of the rice and corn industry. It shall be composed of the Secretary of Commerce and Industry, as chairman; the Secretary of Agriculture and Natural Resources, as vice-chairman; the Governor of the Central Bank, the President of the Philippine National Bank, the Chairman of the Development Bank of the Philippines, one representative of millers and warehousemen, two representatives of planters or producers, one representative of retailers and wholesalers, one representative of consumers cooperatives and one representative of labor, as members, with the representatives of the private sector to be appointed by the President of the Philippines with the consent of the Commission on Appointments. The Chairman, the Vice-Chairman and Members of the Board shall each receive a *per diem* of twenty-five pesos for every meeting of the Board attended by them. The Board shall have such personnel as may be necessary who shall be appointed by it and whose compensation shall be fixed by it.

SEC. 6. Within thirty days from the date of approval of this Act, the Rice and Corn Board shall issue such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall take effect fifteen days after their publication in a newspaper of general circulation printed in Manila. The provisions of this Act and the rules and regulations issued thereunder shall be translated into the dialects spoken in the different regions and shall be given as wide publicity as possible in the provinces, towns and rural areas.

SEC. 7. Violations of the provisions of this Act or of any rules or regulations issued thereunder shall be punished by imprisonment of not less than five years nor more than ten years, and a fine of not less than five thousand pesos nor more than ten thousand pesos, and immediate deportation after service of the sentence.

Whenever the violation is committed by a corporation or association, the President and each one of the directors or managers of said corporation or association who shall have knowingly permitted or failed to prevent the commission of said violation shall be held liable as principals thereof.

The penalty hereinabove provided shall be imposed upon a Filipino citizen who has allowed himself to be used as a dummy in violation of this Act. In case the offender is a naturalized citizen he shall in addition to the penalty prescribed herein, suffer the penalty of cancellation of his naturalization certificate and its registration in the civil registry and deportation.

If the offender is a public officer or employee, he shall, in addition to the penalty of imprisonment and fine prescribed herein, be dismissed from office and perpetually disqualified from holding any public office.

SEC. 8. Nothing contained in this Act shall in any way impair or abridge whatever rights are granted to citizens or juridical entities of the United States of America under existing treaties or agreements between that country and the Republic of the Philippines.

SEC. 9. *Appropriation.*—For the operation and maintenance of the Rice and Corn Board, the sum of five hundred thousand pesos is hereby appropriated out of any funds in the National Treasury not otherwise appropriated which sum shall immediately be placed at the disposal of the Board upon approval of this Act.

SEC. 10. All laws or parts thereof inconsistent with this Act are hereby repealed.

SEC. 11. *Effectivity.*—Except for those provisions the effectivity of which is specifically stated, this Act shall take effect on January 1, 1961.

Approved, August 2, 1960.

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**S. No. 571**
**H. No. 5019**

[REPUBLIC ACT NO. 3019]

## ANTI-GRAFT AND CORRUPT PRACTICES ACT

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

SECTION 1. *Statement of policy.*—It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of public officers and private persons alike which constitute graft or corrupt practices or which may lead thereto.

SEC. 2. *Definition of terms.*—As used in this Act, the term—

(*a*) "Government" includes the national government, the local governments, the government-owned and government-controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches.

(*b*) "Public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph.

(*c*) "Receiving any gift" includes the act of accepting directly or indirectly a gift from a person other than a member of the public officer's immediate family, in behalf of himself or of any member of his family or relative within the fourth civil degree, either by consanguinity or affinity, even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is under the circumstances manifestly excessive.

(*d*) "Person" includes natural and juridical persons, unless the context indicates otherwise.

SEC. 3. *Corrupt practices of public officers.*—In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(*a*) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

(*b*) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

(*c*) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act.

(*d*) Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.

(*e*) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

(*f*) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

(*g*) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

(*h*) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

(*i*) Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel or group to which they belong.

(*j*) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.

(*k*) Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.

The person giving the gift, present, share, percentage or benefit referred to in subparagraphs (*b*) and (*c*); or offering or giving to the public officer the employment mentioned in subparagraph (*d*); or urging the divulging or untimely release of the confidential information referred to in subparagraph (*k*) of this section shall, together with the offending public officer, be punished under Section nine of this Act and shall be permanently or temporarily disqualified in the discretion of the Court, from transacting business in any form with the Government.

SEC. 4. *Prohibition on private individuals.*—(*a*) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene. Family relation shall include the spouse or relatives by consanguinity or affinity in the third civil degree. The word "close personal relation" shall include close personal friendship, social and fraternal connections, and professional employment all giving rise to intimacy which assures free access to such public officer.

(*b*) It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof.

SEC. 5. *Prohibition on certain relatives.*—It shall be unlawful for the spouse or for any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives, to intervene, directly or indirectly, in any business, transaction, contract or application with the Government: *Provided,* That this section shall not apply to any person who, prior to the assumption of office of any of the above officials to whom he is related, has been already dealing with the Government along the same line of business, nor to any transaction, contract or application already existing or pending at the time of such assumption of public office, nor to any application filed by him the approval of which is not discretionary on the part of the official or officials concerned but depends upon compliance with requisites provided by law, or rules or regulations issued pursuant to law, nor to any act lawfully performed in an official capacity or in the exercise of a profession.

SEC. 6. *Prohibition on Members of Congress.*—It shall be unlawful hereafter for any Member of the Congress during the term for which he has been elected, to acquire or receive any personal pecuniary interest in any specific

business enterprise which will be directly and particularly favored or benefited by any law or resolution authored by him previously approved or adopted by the Congress during the same term.

The provision of this section shall apply to any other public officer who recommended the initiation in Congress of the enactment or adoption of any law or resolution, and acquires or receives any such interest during his incumbency.

It shall likewise be unlawful for such member of Congress or other public officer, who, having such interest prior to the approval of such law or resolution authored or recommended by him, continues for thirty days after such approval to retain such interest.

SEC. 7. *Statement of assets and liabilities.*—Every public officer, within thirty days after the approval of this Act or after assuming office, and within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, or in the case of members of the Congress and the officials and employees thereof, with the Office of the Secretary of the corresponding House, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: *Provided,* That public officers assuming office less than two months before the end of the calendar year, may file their first statements in the following months of January.

SEC. 8. *Dismissal due to unexplained wealth.*—If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and unmarried children of such public official may be taken into consideration, when their acquistion through legitimate means cannot be satisfactorily shown. Bank deposits shall be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary.

SEC. 9. *Penalties for violations.*—(*a*) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

Any complaining party at whose complaint the criminal prosecution was initiated shall, in case of conviction of

the accused, be entitled to recover in the criminal action with priority over the forfeiture in favor of the Government, the amount of money or the thing he may have given to the accused, or the fair value of such thing.

(*b*) Any public officer violating any of the provisions of Section 7 of this Act shall be punished by a fine of not less than one hundred pesos nor more than one thousand pesos, or by imprisonment not exceeding one year, or by both such fine and imprisonment, at the discretion of the Court.

The violation of said section proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public officer, even if no criminal prosecution is instituted against him.

SEC. 10. *Competent court.*—Until otherwise provided by law, all prosecutions under this Act shall be within the original jurisdiction of the proper Court of First Instance.

SEC. 11. *Prescription of offenses.*—All offenses punishable under this Act shall prescribe in ten years.

SEC. 12. *Termination of office.*—No public officer shall be allowed to resign or retire pending an investigation, criminal or administrative, or pending a prosecution against him, for any offense under this Act or under the provisions of the Revised Penal Code on bribery.

SEC. 13. *Suspension and loss of benefits.*—Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

SEC. 14. *Exception.*—Unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary token of gratitude or friendship according to local customs or usage, shall be excepted from the provisions of this Act.

Nothing in this Act shall be interpreted to prejudice or prohibit the practice of any profession, lawful trade or occupation by any private person or by any public officer who under the law may legitimately practice his profession, trade or occupation, during his incumbency, except where the practice of such profession, trade or occupation involves conspiracy with any other person or public official to commit any of the violations penalized in this Act.

SEC. 15. *Separability clause.*—If any provision of this Act or the application of such provision to any person or circumstances is declared invalid, the remainder of the Act or the application of such provision to other persons or circumstances shall not be affected by such declaration.

SEC. 16. *Effectivity.*—This Act shall take effect on its approval, but for the purpose of determining unexplained wealth, all property acquired by a public officer since he assumed office shall be taken into consideration.

Approved, August 17, 1960.

H. No. 5023

[REPUBLIC ACT NO. 3020]

# AN ACT APPROPRIATING THE SUM OF TEN MILLION PESOS FOR REHABILITATION OF THE DAMAGES CAUSED BY TYPHOONS AND FLOODS.

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

SECTION 1. The sum of ten million pesos, or so much thereof as may be necessary, is appropriated out of any funds in the ational Treasury not otherwise appropriated, for the rehabilitation, construction or replacement of public buildings, including temporary and P.T.A. school buildings, roads, bridges, installations and other public services damaged by typhoons and floods in the fiscal years nineteen hnudred fifty-nine–sixty and nineteen hundred sixty–sixty-one: *Provided, however,* That of the above amount, five million pesos shall be expended in the Bicol provinces, including Masbate: *And, provided, finally,* That three million pesos of this five million shall be expended in Albay.

Disbursements of the balance of five million pesos shall be made in accordance with certifications of the district engineers as verified by the Department of Public Works and Communications simultaneously on a *pro rata* basis of the damage suffered by the provinces and cities affected by said typhoons and floods.

SEC. 2. This Act shall take effect upon its approval.

Approved, Aug. 17, 1960.

# DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

## Executive Office

PROVINCIAL CIRCULAR
(Unnumbered)

*May 15, 1961*

NATIONAL EDUCATIONAL AND FUND CAMPAIGN—MAY 1 TO JUNE 30, 1961—ELKS CEREBRAL PALSY PROJECT, INC.

*To all Provincial Governors and City Mayors:*

Concerning the National Educational and Fund Campaign of the ELKS Cerebral Palsy Project, Inc., covering the period from May 1 to June 30, 1961, as authorized by the President under Proclamation No. 745, copy of which was furnished your office, there is quoted thereunder, the dispositive portion of said proclamation.

> "* * * I call upon all citizens and residents of the Philippines, irrespective of race and creed, to support the humanitarian campaign by giving generously of their means to alleviate the miserable plight of these unfortunate individuals afflicted with cerebral palsy. I authorize government officials and employees, including school authorities and teachers, to accept, for the Elks Cerebral Palsy Project, Inc., fund raising responsibilities and to give it active support and leadership in their respective communities."

All local officials are hereby urged to lend their wholehearted support and cooperation as in the past to make the drive a success.

For this campaign, the undersigned has been designated as Chairman of Division XXIII (covering provinces, cities and municipalities, except Manila which consists of a separate division), with Mr. Clemente R. Sioson, Chief, Local Governments, as Co-Chairman. The Division has been given as allotment of no less than ₱20,000.00 to cover out of an over-all collection goal of ₱150,000.00. It is hoped that provincial governors and city mayors,, with the help and cooperation of all officials and employees under them, including the barrio officials, will do their best to make possible the collection within their respective jurisdictions of reasonable amounts as their shares which, put together, will be no less than the Division collection goal of ₱20,000.00. Any amount collected should be remitted as early as possible directly to the Elks Cerebral Palsy Project, Inc., Elks Club, Dewey Boulevard, P. O. Box 279, Manila. Please advise us before the 15th of next month (June) as to the progress of the drive to enable us to make report to the National General Chairman of the campaign.

In connection with this campaign, there are being sent to that province/city, under separate cover, folders containing informative data about cerebral palsy for distribution or posting. As no sufficient number of copies thereof are available, the matter of distribution is being left to your discretion.

Provincial Governors are requested to transmit the contents hereof to all municipal and municipal district mayors in their respective provinces and urge them to lend support and cooperation in making this fund campaign a success.

ENRIQUE C. QUEMA
*Assistant Executive Secretary*

(*Chairman, Provincial, City and Local Governments Division, 1961 Elks Cerebral Palsy Educational and Fund Campaign*).

## Department of Finance

### OFFICE OF THE INSURANCE COMMISSIONER

CIRCULAR No. 54.
(Repealing Circular No. 49)

*February 26, 1954*

INSURANCE ASSOCIATIONS AND RATES

*To all Insurance Companies doing business in the Philippines:*

By virtue of the powers conferred upon the Insurance, commissioner in Section 171 of the Insurance Act, the following regulations are hereby promulgated:

I. Associations or groups of insurance companies.

Every association or group of insurance companies "existing on March 1, 1954 or which may

thereafter" be formed in the Philippines engaging in the making of rates or policy conditions to be used by more than one authorized insurance company in this country shall first apply for and obtain a license from the insurance commissioner. The license so issued, which at all times shall be subject to the terms and conditions imposed by the Office of the Insurance Commissioner, shall expire on the 30th of June of each year, and shall be renewable annually.

All such associations or groups of insurance companies aforementioned shall be subject to the supervision of the Insurance Commissioner.

II. Non-life insurance company or group or association of such companies.

Every non-life insurance company or group or association of such companies doing business in the Philippines shall file with the Insurance Commissioner for approval general basic schedules showing the premium rates on all classes of risks, except marine, as distinguished from inland marine, insurable by such insurance company or association of insurance companies in this country.

Information on the following shall likewise be filed for approval by the Insurance Commissioner: charges, credits, terms, privileges, tariff rules, and all other conditions or data which may in any way affect premium rates.

An insurance company or group of such companies may satisfy its obligation to make such filings by becoming a member of or subscriber to a rating organization which makes such filings and by authorizing the insurance commissioner to accept such filings of the rating organization on such company's or group's behalf.

III. Requiring previous application to and approval by the insurance commissioner before any change in the rate schedules filed with him shall take effect.

No change in the schedules filed in compliance with the requirements of the next preceding paragraph shall be made except upon application duly filed with and approved by the Insurance Commissioner. Said application shall state the changes proposed and the date of their effectivity; all changes finally approved by the Insurance Commissioner shall be incorporated in the old schedules or otherwise indicated as new in the new schedules.

IV. Empowering the insurance commissioner to investigate all non-life insurance rates.

The Insurance Commissioner shall have power to examine any or all rates established by non-life insurance companies or group or association of such insurance companies in this country. Should any rate appear, in the opinion of the Insurance Commissioner, unreasonably high or not adequate to the financial safety or soundness of the company charging same, or prejudicial to policyholders, the Commissioner shall, in such case, hold a hearing and/or conduct an investigation. Should the result of such hearing and/or investigation show that the rate is unreasonably high or so low that it is not adequate to the financial safety and soundness of the company charging same, or is prejudicial to policyholders, the Insurance Commissioner shall direct a revision of the said rate in accordance with his findings. Any insurance company or group or association of insurance companies may be required to publish the schedule of rates which may have been revised in accordance herewith.

The decision of the Insurance Commissioner shall be appealable within thirty days after it has been rendered to the Secretary of Finance.

V. Prohibiting non-life insurance companies and their agents from insuring any property in this country at a rate different from that in the schedules; unethical practices.

No insurance company shall engage or participate in the insurance of any property located in the Philippines nor shall any person or company be authorized to act as agent, broker or intermediary for the solicitation or placing of insurance for or on behalf of any company, group of underwriters or other insurance entity not authorized to do business in this country unless the schedule of rates under which such property is insured has been filed and approved in accordance with the provisions of this circular. Neither shall an insurance company write any insurance at a rate different from that provided in its schedules, or refund or remit in any manner or by any devise any portion of the rates so established, or extend to any insured any privilege, advantage, favor, inducement or concession, except as is specified in such schedule.

VI. Requiring the filing of corresponding rate schedule within 30 days.

Any insurance company entering into any contract of insurance on property located within this country for which no rate has been filed as provided in Paragraph II of this circular, shall within 30 days after entering into such contract, file with the Insurance Commissioner, in such form or forms as may be required by him, a schedule of such property rates thereon and such information as may be

required by the Commissioner. Such schedule shall conform to the general basic schedules required in Paragraph II and when filed shall constitute the premium rate of such company for the insured property. A preliminary rate established by an insurance company or group or association of such companies shall be allowed only until such time as it is revised by the Insurance Commissioner.

This circular repeals Circular No. 49, dated March 3, 1952.

This circular shall take effect upon its approval by the Secretary of Finance.

CEFERINO VILLAR
*Insurance Commissioner*

Approved:

JAIME HERNANDEZ
*Secretary of Finance*

# Department of Justice

## OFFICE OF THE SOLICITOR GENERAL

ADMINISTRATIVE ORDER NO. 19

*January 24, 1961*

AUTHORIZING DISTRICT JUDGE ENRIQUE MAGLANOC OF QUEZON TO HOLD COURT AT BALER, SAME PROVINCE.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, as amended, the Honorable Enrique Maglanoc, District Judge of Quezon, Second Branch, is hereby authorized to hold court at Baler, same province, effective January 25, 1961, or as soon thereafter as practicable, up to the end of February, 1961, for the purpose of trying all kinds of cases and to enter judgments therein.

ALEJO MABANAG
*Secretary of Justice*

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ADMINISTRATIVE ORDER NO. 20

*December 21, 1960*

DESIGNATING SPECIAL PROSECUTOR LEONARDO B. CAÑARES TO ASSIST THE CITY FISCAL OF MANILA IN CERTAIN CASES.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, as amended, Mr. Leonardo B. Cañares, Special Prosecutor in the Prosecution Division, this Department, is hereby designated effective immediately and to continue until further orders, to assist the City Fiscal of Manila in the investigation and prosecution of criminal cases bearing I. S. Nos. 39144, 001917 and 001918 of the City Fiscal's Office of Manila, wherein Mr. Jose C. Reyes, owner of the Blu-Car Taxi is the complainant for estafa, and Mr. Cañares is administratively accountable to the Secretary of Justice and to the Chief Prosecuting Attorney of this Department.

ALEJO MABANAG
*Secretary of Justice*

ADMINISTRATIVE ORDER NO. 21

*January 19, 1961*

DESIGNATING SPECIAL PROSECUTOR JESUS V. ABELEDA TO ASSIST THE PROVINCIAL FISCAL OF LANAO DEL NORTE.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, as amended, Mr. Jesus V. Abeleda, Special Prosecutor in this Department is hereby designated, effective immediately and to continue until further orders, to assist the Provincial Fiscal of Lanao del Norte in the investigation and prosecution of the criminal cases involving the alleged murders of Engracio Angcos and Apolinario Pepito; and the alleged frustrated murders of Sulpicio Mahipos, Diego Palomares, Constancio Marcos and Lorenzo Parilla in the said province. Mr. Abeleda is administratively accountable to the Secretary of Justice and to the Chief Prosecuting Attorney of this Department.

ALEJO MABANAG
*Secretary of Justice*

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ADMINISTRATIVE ORDER NO. 22

*January 23, 1961*

DESIGNATING SPECIAL PROSECUTOR VICENTE M. REQUILME TO ASSIST THE CITY FISCAL OF MANILA.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, as amended, Mr. Vicente M. Requilme, Special Prosecutor in the Prosecution Division, this Department, is hereby designated, effective immediately and to continue until further orders, to assist the City Fiscal of Manila in the investigation and prosecution of I.S. No. 5011 ('60) entitled "Julieta Bagsik *vs.* Gliceria M. Clemente" for estafa. Mr. Raquilme is administratively accountable to the Secretary of Justice and to the Chief Prosecuting Attorney of this Department.

ALEJO MABANAG
*Secretary of Justice*

ADMINISTRATIVE ORDER No. 23

*January 23, 1961*

DESIGNATING JUSTICE OF THE PEACE MELITON PAJARILLAGA OF STA. ROSA, NUEVA ECIJA AS ACTING MUNICIPAL JUDGE OF CABANATUAN CITY.

In the interest of the administration of justice and pursuant to the provisions of section 75 of Republic Act No. 526, as amended, Justice of the Peace Meliton Pajarillaga of Sta. Rosa, Nueva Ecija, is hereby designated, in addition to his regular duties, Acting Municipal Judge of Cabanatuan City to preside over the Second Branch thereof, effective immediately and until further orders from this Department.

ALEJO MABANAG
*Secretary of Justice*

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ADMINISTRATIVE ORDER No. 24

*January 23, 1961*

AUTHORIZING DISTRICT JUDGE CONRADO M. VASQUEZ OF BATANGAS, TO HOLD COURT IN MANILA, SECOND BRANCH, FOR A CERTAIN PERIOD.

In the interest of the administration of justice and pursuant to the provisions of section 51 of Republic Act 296, as amended, the Honorable Conrado M. Vasquez, District Judge of Batangas, Third Branch, is hereby authorized to hold court in Manila, Second Branch, for a period of not more than three (3) months beginning February 6, 1961, or as soon thereafter as practicable, for the purpose of trying all kinds of cases and to enter judgments therein.

ALEJO MABANAG
*Secretary of Justice*

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ADMINISTRATIVE ORDER No. 26

*January 24, 1961*

AUTHORIZING DISTRICT JUDGE RAYMUNDO VILLACETE OF ROMBLON TO HOLD COURT IN SAN AGUSTIN, SAME PROVVINCE.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act 296, as amended, the Honorable Raymundo Villacete, District Judge of Romblon, is hereby authorized to hold court in San Agustin, same province, during the month of February, 1961, for the purpose of trying all kinds of cases and to enter judgments therein.

ALEJO MABANAG
*Secretary of Justice*

# HISTORICAL PAPERS AND DOCUMENTS

**SPEECH OF PRESIDENT GARCIA AT THE KICK-OFF CEREMONIES OF THE CEREBRAL PALSY 1961 FUND CAMPAIGN HELD AT MALACAÑANG SOCIAL HALL, ON MAY 19, 1961**

MY FRIENDS:

I ALWAYS find the time, in spite of the busy schedule that Presidents usually have, to attend ceremonies such as this in order to launch a worthy and worthwhile fund campaign. My heart bleeds, as yours must also, for the more unfortunate among us. And so, we are gathered here for the noble purpose of starting officially the fund campaign intended to strengthen further our efforts to curb that dreaded disease of cerebral palsy.

Sponsored by the Benevolent and Protective Order of Elks since five years ago, our society has shown special and extraordinary concern for the Cerebral Palsy Project. I say special and extraordinary concern because the victims of cerebral palsy are mostly children whose usefulness to society and to themselves will forever be lost if nothing is done to cure their affliction. No sight is more heart-rending and nothing more tragic than that of a small child who is saddled with grief and the pain of his affliction because he has been temporarily deprived of the use of his limbs or because he is mentally retarded.

Statistics show that there are about 40,000 such children in the Philippines today. The records also show that some 1,400 babies are born every year suffering from this disease thereby swelling the number of the afflicted annually. These children if not treated and cured will remain as permanent burdens to their parents and to the community as a whole. On the other hand successful treatment would convert them into happy and useful citizens, definite assets to themselves and to their country as well.

This Cerebral Palsy Project of the Elks Club is a truly magnificent example of Philippine-American cooperation. Started only half a decade ago, the project has been able to establish complete clinic in the National Orthopedic Hospital Compound in Mandaluyong, Rizal, and only last year a branch clinic in Iloilo to serve the West Visayas region. Hundreds of patients have been and are still being treated in these clinics. Likewise, it has been found advisable to send Filipino doctors abroad to specialize in the treatment of this affliction.

I want to mention here also that I am impressed with the efficiency and dedication to duty with which the Elks Cerebral Palsy Project has been conducted. I understand that only five per cent of the project's budget goes into

administration and only two and two-thirds per cent for expenses for the fund campaign. And the balance of 65 per cent goes into actual treatment and care of the beneficiaries directly; 10 per cent for supplies and equipment; training of especialists, 8 per cent; maintenance and repair, four and two-thirds per cent; and finally educational campaign, four and two-thirds per cent.

This amazing financial record in minimum overhead expenses is something that should be emulated by other civic and charitable organizations engaged in projects that depend for their financial support from the contributing public.

To the people behind the Elks Cerebral Palsy Project, therefore, I say today, I am proud of your achievements and I am truly happy you are doing this kind of work in my country and for my people.

I now call upon all residents of the Philippines, be they Filipinos or aliens, all businessmen and civic groups, all government officials on the national, provincial, and municipal levels, all employees in the public service or in private enterprises, to give what they can and extend all the cooperation necessary to make this 1961 Educational and Fund Campaign of the Elks Cerebral Palsy Project a complete success.

I hereby declare the 1961 Educational and Fund Campaign of the Elks Cerebral Palsy Project officially open and I shall now hand my own personal contribution to your chairman.

# DECISIONS OF THE SUPREME COURT

[No. L-9595. 28 November 1958]

PEDRO PASCUAL, LUISA CORPUZ, ANDRES PASCUA, VICTORIANO PASCUA and BONIFACIA LORA, plaintiffs and appellants, *vs.* MARIANO COPUYOC, QUINTIN MELEBO, MARTA MANUEL, PEDRO PASCUA, SEVERINA PASCUA, ANGELO REYES, FLAVIANO BALTAZAR and THE INSULAR TREASURER, defendants and appellees.

1. REGISTRATION OF TITLE TO LANDS; REVIEW; PRAYER FOR ANNULMENT OF DECREE NOT EXCLUSIVE.—The alternative prayer for nullity or annulment of the decree issued by the General Land Registration Office cannot be construed as defeating the other prayers of the complaint which should be granted if the allegations set forth in the complaint could be established or proved.
2. ID.; ID.; NULLITY OF DECREE; AFTER LAPSE OF ONE YEAR; FRAUDULENT TRANSACTIONS.—The nullity of the decree cannot be declared and ordered because it would amount to reviewing the decree after the period provided for in Section 38, Act No. 496, as amended by Act No. 3630, had elapsed. Nevertheless, if the series of fraudulent transactions described in the complaint could be proved, then the court should annul such sales and donation.
3. ID.; ID.; ORIGINAL REGISTERED OWNERS HAVE NO LONGER RIGHT TO LAND; RECONVEYANCE; CASE AT BAR.—If the appellants in the case at bar should succeed in establishing and proving that the defendants, who were the original registered owners of the parcel of land have no longer any interest, right, share and participation in the parcel of land, the Court could direct them or their lawful heirs to reconvey their share to the appellants.
4. PLEADING AND PRACTICE; DEFENSE NOT SET UP IN ANSWER; MOTION TO DISMISS.—A defendant may no longer be allowed to move for the dismissal of a complaint on the ground that the action is barred by the statute of limitations if he failed to set up such defense in his answer because he must be deemed to have waived the same pursuant to the provisions of Section 8, Rule 26 of the Rules of Court.

APPEAL from an order of the Court of First Instance of Nueva Ecija. Montesa, *J.*

The facts are stated in the opinion of the Court.

*Lauro O. Sansano* for plaintiffs and appellants.

*Mariano D. Copuyoc* for and in his own behalf.

*Romeo L. Kahayon* for defendant and appellee Quintín O. Melebo.

*First Assistant Solicitor General Guillermo E. Torres* and *Solicitor Rafael P. Cañiza* for defendant and appellee the Insular Treasurer.

PADILLA, *J.:*

Appeal from an order dismissing the plaintiff's complaint in civil case No. 1445 of the Court of First Instance

of Nueva Ecija upon motion of the defendant Quintin Melebo on the ground that the court proceedings to reopen for review a decree entered in land registration proceedings is barred by the statute, more than one year having elapsed since the entry of the decree.

The case involves Lot No. 2986 of the Cadastral Survey of Guimba, Cadastral Case No. 23, G.L.R.O. Record No. 401, situated in barrio Nagpandayan, municipality of Guimba, province of Nueva Ecija, containing an area of 43,256 sq. m. more or less. The plaintiffs' complaint filed on 29 March 1954, leaving out unnecessary averments, alleges that during the Spanish regime, Juan Pascua, grandfather of the plaintiffs Pedro Pascua and Andrés Pascua, was the owner of a parcel of land designated as Lot No. 2986 of the Cadastral Survey of Guimba. On 2 February 1900 in a private instrument Juan Pascua donated it to the spouses Victoriano Pascua and Bonifacia Lora. On 31 January 1929 in a public instrument registered in the registry of deeds of the province, the spouses Victoriano and Bonifacia sold one-half of it to Andrés Pascua. On 2 March 1936 in a public document also recorded in the same registry of deeds, for and in consideration of the marriage of Pedro Pascua and Luisa Corpuz, the spouses Victoriano and Bonifacia donated the remaining half of the parcel of land to Pedro Pascua who accepted it in the document of donation. On 14 June 1939 Pedro Pascua and Andrés Pascua entered into an agreement whereby they partitioned the parcel of land assigning the western half of the parcel of land to the former and the eastern half to the latter. From 1900 to 1929 the plaintiffs Victoriano Pascua and Bonifacia Lora and from 1929 to the present Andrés Pascua have been in possession of the eastern half of the parcel of land; and from 1900 to 1936 the spouses Victoriano Pascua and Bonifacia Lora and from 1936 to the present the spouses Pedro Pascua and Luisa Corpuz have been in possession of the western half of the parcel of land. Andrés Pascua and Pedro Pascua and their predecessors-in-interest Victoriano Pascua and Bonifacia Lora have paid the land tax on the parcel of land from 1900 to the present time. Sometime in April 1940, Andrés Pascua and Pedro Pascua discovered that on 31 October 1929 in the cadastral proceedings held by the Court in Guimba, Nueva Ecija, the registration of the title to the parcel of land was decreed in favor of the heirs of the late Juan Pascua, namely: (1) María Pascua, 55 years of age, widow; (2) Valeriana Pascua, 50 years of age, married to Julian Manuel; (3) Severina Pascua, 30 years of age, single; (4) Paulina Pascua, 30 years of age, widow; (5) Victoriano Pascua, 32 years of age, married to Bonifacia Lora; (6) Pedro Pascua, 30 years of age, married to Marcelina Arecheta; and (7) Petronila Pascua, 28 years

of age, married to Marcelo Baltazar. They lost no time in demanding from the herein defendants, heirs of the late Juan Pascua, and successors-in-interest of such heirs, except Quintin Melebo, Mariano Copuyoc and the Insular Treasurer, to reconvey it to them. On 21 April 1940, Angelo Reyes, as sole heir of the late María Pascua; on 29 April 1940, Pedro Pascua (married to Marcelina Arecheta); on 1 May 1940, Severina Pascua; and on 12 January 1941, Marcelo Baltazar, in his capacity as guardian *ad litem* of the minor Flaviano Baltazar nd Virginia Baltazar, heirs of the late Petronila Pascua, executed separate deeds reconveying to Pedro Pascua and Andrés Pascua their respective shares in the parcel of land. On 12 June 1940 Andrés Pascua and Pedro Pascua filed a petition praying the Cadastral Court to—

> * * * review the decision of the cadastral Court dated October 31, 1929, and thereafter adjudicate the above described parcel of land to the petitioners Pedro Pascua and Andrés Pascua, and that an order also be issued for the issuance of decree in the names of the said petitioners Pedro Pascua and Andrés Pascua.

The petition was finally set for hearing on 21 June 1940 after notice thereof upon Angelo Reyes, Pedro Pascua, Severina Pascua, Victoriano Pascua, Marcelo Baltazar, Flaviano Baltazar, Virginia Baltazar, Valeriano Pascua and Paulina Pascua. Only the last two named persons objected to the petition. Pedro Pascua, Severina Pascua, Marcelo Baltazar, as guardian of the minors Flaviano and Virginia gave their consent to the granting of the petition. Up to this time, the Court has not yet acted upon the motion. On 31 March 1952 the defendants Marta Manuel, Pedro Pascua, Angelo Reyes, Severina Pascua, Flaviano Baltazar and Quintin Melebo, a lawyer by profession, filed a motion praying for the issuance of the decree of registration of the parcel of land in favor of the aforementioned heirs of the late Juan Pascua. On 7 April 1952 the Court ordered the General Land Registration Office to issue the corresponding decree. On 18 June 1952, the General Land Registration Office issued Decree No. 7264. On 7 July 1952 the Registrar of Deeds in and for the province of Nueva Ecija issued original certificate of title No. O–680 in the name of the heirs of the late Juan Pascua. On 3 August 1952 Pedro Pascua and Angelo Reyes, the latter claiming to be the sole heir of the late Maria Pascua and Paulina Pascua, sold to Marta Manuel their respective shares and interests in the parcel of land. On the same date, Flaviano Baltazar and Virginia Baltazar, heirs of the late Petronila Pascua, donated to Marta Manuel their respective shares and interests in the parcel of land. On 12 March 1953 Severina Pascua sold to Marta Manuel her share and interest in the parcel of land. On 30 Nov-

vember 1953, Marta Manuel executed an affidavit asserting that she is the only heir of the late Valeriana Pascua and entitled to the latter's share and interest in the parcel of land. The sales, donation and affidavit just mentioned were all executed with the legal assistance and advice of the defendants Quintin Melebo and Mariano Copuyoc who are attorneys-at-law. On 27 June 1953, the Registrar of Deeds in and for the province of Nueva Ecija cancelled original certificate of title No. O–680 and issued in lieu thereof transfer certificate of title No. NT–12784 in the name of Marta Manuel for six-seventh undivided share, and of Victoriano Pascua, married to Bonifacia Lora, for one-seventh undivided share, in the parcel of land. On 30 November 1953, Marta Manuel sold her six-seventh undivided share and interest in the parcel of land to Quintin Melebo. On 12 February 1954, the Registrar of Deeds in and for the province of Nueva Ecija cancelled transfer certificate of title No. NT–12784 and issued in lieu thereof transfer certificate of title No. NT–15124 in the name of Quintin Melebo for six-seventh undiveded share in the parcel of land. On 22 March 1954, Quintin Melebo sold his share to Mariano Copuyoc. On 23 March 1954, the Registrar of Deeds cancelled transfer certificate of title No. NT–15124 and issued in lieu thereof transfer certificate of title No. NT–15403 in the name of Mariano Copuyoc for six-seventh undivided share.

The plaintiffs' complaint further alleges that the series of transactions just narrated were fraudulently entered into to deprive them of their property, because the defendant heirs knew fully well that they had no longer any right or interest in the parcel of land, and the defendants Quintin Melebo and Mariano Copuyoc, lawyers by profession, had actual knowledge thereof. Upon the foregoing allegations the plaintiffs pray that judgment be rendered ordering and declaring the folowing:

(1) The plaintiffs, the spouses Pedro Pascua and Luisa Corpuz and Andrés Pascua, to be the true and absolute owners in equal shares of the above described parcel of land.

(2) The nullity of Decree No. 7264 issued by the General Land Registration Office on June 18, 1952.

(3) The nullity of the Deeds of Sale executed by Pedro Pascua, Angel (Angelo Reyes), and Severina Pascua in favor of the defendant Marta Manuel.

(4) The nullity of the Deed of Donation executed by the defendant Flaviano Baltazar in favor of the defendant Marta Manuel.

(5) The nullity of the Deed of Sale executed by the defendant Marta Manuel.

(6) The nullity of the Deeds of Sale executed by the defendant Marta Manuel in favor of the defendant Quintin Melebo.

(7) The nullity of the Deed of Sale executed by the defendant Marta Manuel in favor of the defendant Quintin Melebo.

(8) The nullity of Original Certificate of Title No. O–680 and of Transfer Certificate of Title Nos. NT–12784, NT–15124, and NT–15403.

(9) The issuance of a Decree by the General Land Registration Office over the above described parcel of land in favor of the plaintiffs, the spouses Pedro Pascua and Luisa Corpuz and Andrés Pascua.

(10) The issuance by the Register of Deeds of Nueva Ecija the corresponding Original Certificate of Title in favor of the plaintiffs, the spouses Pedro Pascua and Luisa Corpuz and Andrés Pascua, and based on the decree issued in accordance with the next preceding paragraph.

(11) The defendants Mariano Copuyoc, Quintin Melebo, Marta Manuel, Pedro Pascua, Flaviano Baltazar, Severina Pascua and Angelo Reyes (to) pay jointly and severally the plaintiffs, the spouses Pedro Pascua, and Luisa Corpuz and Andrés Pascua the amount of Seven Thousand Six Hundred Eighty Pesos (₱7,680) with legal rate of interest from June 18, 1952, in the remote possibility that the plaintiffs are deprived of the above described parcel of land.

(12) The defendant Insular Treasurer of the Phiilippines to pay the plaintiffs, the spouses Pedro Pascua and Luisa Corpuz and Andrés Pascua the amount of Seven Thousand Six Hundred Eighty Pesos (₱7,680.00) with legal rate of interest from June 18, 1952 in the remote possibility that said plaintiffs are deprived of the above described parcel of land and in the event that all the defendants named in the next preceding paragraph are insolvent.

(13) The defendants Quintin Melebo, Mariano Copuyoc, Pedro Pascua, Angelo Reyes, Severina Pascua, Marta Manuel and Flaviano Baltazar to pay jointly and severally the plaintiffs the total sum of Ten Thousand Pesos (₱10,000.00) as damages and attorney's fees.

(14) The defendants to pay the costs of the suit; and it is further prayed that such other remedy which this Honorable Court may deem just and equitable be issued.

The defendants Quintin Melebo and Mariano Copuyoc filed separate answers specifically denying the allegations of the plaintiffs' complaint; pleading that they are innocent purchasers for value, having relied upon the certificates of title of their respective predecessors-in-interest which did not show any defect, infirmity or flaw; disclaiming actual knowledge thereof, if there was any; and Mariano Copuyoc further asserting that the decree of registration cannot be reopened for review because more than one year from the issuance thereof already had elapsed. They pray that the complaint be dismissed. As counterclaim, Quintin Melebo claims that the malicious and defamatory imputation by the plaintiffs that he bought the property from Marta Manuel in bad faith adversely affected his integrity, good name and professional and business standing in the community for which he should be paid ₱10,000 by way of moral damages. As counterclaim, Mariano Copuyoc claims that the malicious, libelous and defamatory statements of the plaintiffs in their complaint and their taking forcible possession of six-seventh part of the parcel of land in question caused him damages for which he should be indemnified in the sum of ₱50,000 and paid

100 cavanes of palay every harvest until the possession thereof be restored to him.

The Solicitor General, in behalf of the Insular Treasurer, filed an answer specifically denying certain allegations of the plaintiffs' complaint and disclaiming knowledge or information sufficient to form a belief as to the others. As special defense, he avers that the late Juan Pascua could not have donated legally in a private document the parcel of land in question to the spouses Victoriano Pascua and Bonifacia Lora. Consequently, the latter could not have sold validly one-half thereof to Andrés Pascua and donated *propter nuptias* the other half to Pedro Pascua. As the plaintiffs did not acquire any right or interest in the parcel of land, they were not deprived of their property by the operation of Act No. 496, as amended, and hence they cannot recover damages from the Assurance Fund. Furthermore, the plaintiffs' action which seeks to recover the parcel of land by reconveyance, precludes that of recovery for damages from the Assurance Fund. Lastly, the action to recover damages from the Assurance Fund already had prescribed, more than six years from April 1940, when the plaintiffs discovered the alleged erroneous and fraudulent decree of registration of the parcel of land in the name of the heirs of the late Juan Pascua, having already elapsed.[1] He prays that the complaint be dismissed.

The plaintiffs filed replies to the answers of Quintin Melebo and Mariano Copuyoc and answers to their counterclaim.

The defendants Flaviano Baltazar, Angelo Reyes, Severina Pascua, Marta Manuel and Pedro Pascua were declared in default for failure to appear despite summons.

On 18 May 1955 the defendant Quintin Melebo filed a motion to dismiss the plaintiffs' complaint on the ground that the cause of action is barred by the statute of limitations, the main relief sought by the plaintiffs being to annul and set aside the decree of registration, a relief which cannot legally be secured because the period of one year from the issuance thereof already had elapsed. The plaintiffs filed an answer to the motion to dismiss contending that the defendant Quintin Melebo not having set up in his answer the defense that the action is barred by the statute of limitations, he could no longer move for dismissal pursuant to section 5, Rule 8, and that such defense was waived for failure to set it up as defense in the answer pursuant to section 8, Rule 26. On 7 June 1955 the trial court granted the motion and dismissed the complaint without costs. The plaintiffs have appealed.

The suit commenced by the appellants, as may be gathered from the allegations of their complaint, seeks to

[1] Section 107, Act No. 496.

annul the sale and donation made by the original registered owners and their successors-in-interest of their shares and interests in the parcel of land to Marta Manuel and conveyance by the latter to the appellee Quintin Melebo and the sale by the latter to the appellee Mariano Copuyoc, on the ground of fraud, lack of consideration, knowledge by the appellees Quintin Melebo and Mariano Copuyoc of the fact that the original registered owners and their successors-in-interest who had sold and donated their shares and interests in the parcel of land to Marta Manuel were not the true owners of such shares and interests, because they were the attorneys who assisted and advised the original registered owners and Marta Manuel in the series of transactions made on the parcel of land, and for that reason the two appellees Quintin Melebo and Mariano Copuyoc were aware of the flaw of the title of their predecessors-in-interest. The complaint alleges that the defendants Angelo Reyes, as sole heir of the late Maria Pascua, Pedro Pascua, married to Marcelina Arecheta, and Severina Pascua and Marcelo Baltazar, in his capacity as guardian *ad litem* of the minors Flaviano and Virginia Baltazar, heirs of the late Petronila Pascua, had executed deeds to reconvey to the appellants Pedro Pascua and Andrés Pascua their respective shares and interests in the parcel of land; and that all the defendants knew that there was a pending petition in the cadastral court filed on 12 June 1940 by the appellants praying for the setting aside of the decision of the cadastral court rendered on 31 October 1929 and for a decree of registration of the parcel of land in the name of the appellants.

Such being the case the alternative prayer for nullity or annulment of the decree issued by the General Land Registration Office on 18 June 1952 cannot be construed as defeating the other prayers of the complaint which should be granted if the allegations set forth in the complaint could be established or proved. Of course, the nullity of the decree cannot be declared and ordered, because it would amount to reviewing the decree after the period provided for in section 38, Act No. 496, as amended by Act No. 3630, had elapsed. Nevertheless, if the series of fraudulent transactions described in the complaint could be proved, then the Court should annul such sales and donation. If the appellants should succeed in establishing and proving that the defendants, who were the original registered owners of the parcel of land, have no longer any interest, right, share and participation in the parcel of land, the Court could direct them or their lawful heirs to reconvey their share to the appellants.

The other point involved in this appeal is whether after the appellee Quintin Melebo had filed his answer without

setting up the defense that the action of the appellants is barred by the statute, as provided for in section 38, Act No. 496, as amended by Act No. 3630, he may still be allowed to move for the dismissal of the complaint on the ground that the action is barred by the statute of limitations, a defense he has failed to set up in his answer.

Section 5, Rule 8, provides:

> If no motion to dismiss has been filed, any of the grounds therefor as provided in this rule, may be pleaded as an affirmative defense, and a preliminary hearing may be had thereof as if a motion to dismiss has been filed.

Section 8, Rule 26, provides:

> A motion attacking a pleading or a proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

It is clear that the motion filed by the appellee Quintin Melebo for the dismissal of the complaint was not in accordance with the above quoted provisions of the Rules, because the appellee Quintin Melebo must be deemed to have waived the defense of prescription of the action for failure to set it up in his answer, pursuant to the provisions of section 8, Rule 26.

The order appealed from is set aside and the case remanded to the lower court for further proceedings in accordance with law, with costs against the appellee Quintin Melebo.

*Bengzon, Bautista Angelo, Labrador, Concepción, Reyes, J. B. L.,* and *Endencia, JJ.,* concur.

*Parás, C. J.,* in the result.

*Order set aside.*

[No. L-11801. June 30, 1959]

CIRILO MODESTO, petitioner, *vs.* JESUS MODESTO, ET AL., ETC., respondents.

SETTLEMENT OF ESTATE OF DECEASED PERSONS; PROCEEDINGS WHEN PROPERTY OF ESTATE IS CONCEALED, EMBEZZLED OR CONVEYED FRAUDULENTLY.—If an executor or administrator or any individual interested in the estate of the deceased, complains to the court having jurisdiction of the estate that a person or persons are suspected of having concealed, embezzled, or conveyed away any of the properties, real or personal, of the deceased, the court may cite such suspected person or persons to appear before it and may examine him or them on oath on the matter of such complaint. In such proceedings the trial court has no authority to decide whether or not said properties belong to the estate or to the persons examined. If, after such examination there is good reason to believe that said person or persons examined are keeping properties belonging to the estate, then the administrator should file an ordinary action in court to recover the same.

ORIGINAL ACTION in the Supreme Court. Certiorari with Preliminary Injunction.

The facts are stated in the opinion of the Court.

*Pelayo V. Nuevo* and *Segundo M. Zosa* for the petitioner.
*Antonio Montilla* for the respondents.

MONTEMAYOR, *J.:*

This is a petition for certiorari and for a writ of preliminary injunction filed by Cirilo Modesto to set aside the order of the Court of First Instance of Leyte dated March 8, 1954, the writ of execution dated April 27, 1954 as well as the alias writ of execution dated November 10, 1955.

The facts in this case are not in dispute. It would appear that Bruno Modesto died leaving several heirs, among them, Cirilo Modesto and Jesus Modesto. In the course of the intestate proceedings, Jesus Modesto, acting as administrator of the estate of Bruno, filed on November 7, 1953, in the Court of First Instance of Tacloban, Leyte, a motion to cite and examine under oath several persons, especially Cirilo Modesto, regarding properties concealed, embezzled or fraudulently conveyed. On December 7, 1953 the court issued an order appointing the Provincial Sheriff of Leyte and the Chief of Police of Tanawan, Leyte, as joint commissioners, to verify and ascertain persons who were holding, claiming or possessing properties belonging to the estate of the deceased Bruno Modesto. In said motion of Jesus Modesto he listed said properties supposed to belong to the estate, classified as follows: jewels under items 1, 2 and 3; furniture and other personal properties under items 4–10; the 11th item is supposed to be cash taken from a deposit in the Office of the Chief of Police of Tanawan, Leyte, after taking funeral and other ex-

penses, in the amount of ₱1,700; and real properties under items 12–26.

On January 12, 1954, the joint commissioners submitted their report. On March 1, 1954 Jesus Modesto, administrator, filed a motion in court to require Cirilo Modesto to turn over to him as administrator the personal properties belonging to the intestate supposed to be in Cirilo's possession. Pursuant to said motion, the trial, on March 8, 1954, issued an order requiring Cirilo Modesto to deliver to the administrator personal properties listed in the order, such as one narra aparador, 1 desk, 1 looking glass 5 × 3 ft., 1 trunk containing clothes, 1 bicycle, 11 pieces of steel matting and money said to have been taken from a deposit made with the Chief of Police in the amount of ₱1,700.00. Thereafter, on April 27, 1954, a writ of execution was issued and on May 10, 1955 an alias writ of execution was also issued by the trial court. By virtue of said writ of execution the Provincial Sheriff issued a Notice of Attachment against the real property described in Certificate of Title No. 30167 of the Register of Deeds of Leyte and under Tax Assessment in the name of Cirilo Modesto.

On June 2, 1955 Cirilo Modesto filed an Urgent Motion to Set Aside the Writ of Execution and for a Writ of Preliminary Injunction, which motion was opposed by Jesus. On June 4, 1955 the Provincial Sheriff sold at public auction the real property above-mentioned to the highest and only bidder Jesus Modesto for ₱2,454.92 and on June 6, 1956, the Provincial Sheriff issued a Sheriff's Certificate of Final Sale in favor of Jesus. On June 29, 1956 Jesus Modesto filed a Motion for a writ of Possession. On July 11, 1956 Cirilo filed his Motion for Reconsideration of the order dated June 4 which the trial court denied. On August 3, 1956, in pursuance of the motion for a Writ of Possession, the Provincial Sheriff issued a notification to Cirilo placing Jesus in possession of the real property sold to him. Cirilo then filed the present petition for certiorari to annul the proceedings had before the Court of First Instance of Leyte.

The trial court, in issuing its order of March 8, 1954 requiring Cirilo to deliver the properties listed therein to Jesus as administrator, supposedly acted under the provisions of Section 6, Rule 88 of the Rules of Court which reads as follows:

"SEC. 6. *Proceedings when property concealed, embezzled or fraudulently conveyed.*—If an executor or administrator, heir, legatee, creditor, or other individual interested in the estate of the deceased, complains to the court having jurisdiction of the estate that a person is suspected of having concealed, embezzled, or conveyed away any of the money, goods or chattels of the deceased, or that such person has in his possession or has knowledge of any

deed, conveyance, bond, contract, or other writing which contains evidence of or tends to disclose the right, title, interest, or claim of the deceased to real or personal estate, or the last will and testament of the deceased, the court may cite such suspected person to appear before it and may examine him on oath on the matter of such complaint; and if the person so cited refused to appear, or to answer on such examination or such interrogatories as are put to him, the court may punish him for contempt, and may commit him to prison until he submits to the order of the court. The interrogatories put to any such person, and his answers thereto, shall be in writing and shall be filed in the clerk's office."

In this the trial court committed error because the purpose of the section above-reproduced, which section was taken from Section 709 of Act 190, is merely to elicit information or to secure evidence from those persons suspected of having possessed or having knowledge of the properties left by a deceased person, or of having concealed, embezzled or conveyed any of the said properties of the deceased. In such proceedings the trial court has no authority to decide whether or not said properties, real or personal, belong to the estate or to the persons examined. If, after such examination there is good reason to believe that said person or persons examined are keeping properties belonging to the estate, then the next step to be taken should be for the administrator to file an ordinary action in court to recover the same (Alafriz *vs.* Mina, 28 Phil. 137; Cui *vs.* Piccio, L–5131, July 31, 1952; Changco *vs.* Madrelejos, 12 Phil. 543; Guanco *vs.* PNB, 54 Phil. 244, cited in Moran's Rules of Court, Vol. 2, 1957 Edition, pp. 443–444).

The order requiring Cirilo to deliver the properties and cash stated in the order, as belonging to the estate, said that Cirilo was supposed to have admitted having received or taken possession of said properties after the death of Bruno. This statement or findings of the lower court is not supported by the evidence on record. As a matter of fact, in the answer of Cirilo to the motion of the administrator, he claimed that although he held the aparador mentioned in Item 4 in the list of properties, nevertheless, said furniture belonged to their parents and so Bruno Modesto, had only 6 share; that he, Cirilo, did not have the looking glass mentioned in the motion because the same had been taken by Jesus himself, neither did he have the desk in question; that though he held a trunk, it was empty and only contained clothes which were torn; that the bicycle in question was in the possession of Mauricio Modesto, the nephew of Bruno; that he, Cirilo, did not keep the 11 pieces of steel matting; neither did he ever receive the amount of ₱1,700.00 supposed to have been deposited in the office of the Chief of Police. But, even if Cirilo had admitted possession of the properties which he was required by the court to deliver to Jesus, still it

was necessary for the ordinary courts, not the probate court, to determine the title and ownership of said properties.

In view of the foregoing, the petition for certiorari is hereby granted and the order of the trial court of March 8, 1954, the Writ of Execution of April 27, 1954 and the alias Writ of Execution of May 10, 1955, and of course the sale made by the Sheriff of the real property covered by Certificate of Title No. 30167 are set aside. Respondent Jesus Modesto will pay the costs.

*Parás, C. J., Bengzon, Padilla, Bautista Angelo, Concepción, Endencia,* and *Barrera, JJ.,* concur.

*Petition granted.*

[No. L-12010 & L-12113. October 20, 1959]

KUENZLE & STREIFF, INC., petitioner, *vs.* THE COLLECTOR OF INTERNAL REVENUE, respondents.

1. TAXATION; DEDUCTIONS; BONUSES TO EMPLOYEES WHEN DEDUCTIBLE.—Bonuses to employees made in good faith and as additional compensation for the services actually rendered by the employees are deductible, provided such payments, when added to the stipulated salaries, do not exceed a reasonable compensation for the services rendered (Mertens, Law of Federal Income Taxation, Sec. 25-50 p. 410).
2. ID.; ID.; ID.; CONDITION PRECEDENTS.—The condition precedents to the deduction of bonuses to employees are: (1) the payment of the bonuses is in fact compensation; (2) it must be for personal services actually rendered and (3) the bonuses, when added to the salaries, are "reasonable * * * when measured by the amount and quality of the services performed with relation to the business of the particular taxpayer." (Idem. Sec. 2544, p. 395).
3. ID.; ID.; ID.; NO FIXED TEST TO DETERMINE REASONABLENESS OF PAYMENT OF BONUSES.—There is no fixed test for determining the reasonableness of a given bonus as compensation. This depends upon many factors one of them being "the amount and quality of the services performed with relation to the business." Other tests are: payment must be "made in good faith." "The character of the taxpayer's business, the value and amount of its net earnings, its locality, the type and extent of the services rendered, the salary policy of the corporation." "The size of the particular business," the employees' qualifications and contributions to the business venture" and "general economic conditions" (4 Mertens, Law of Federal Income Taxation, Secs. 25-44, 25-49, 25-50, 25-57, pp. 407-412). However, in determining whether the particular salary or compensation payment is reasonable, the situation must be considered as a whole. Ordinarily, no single factor is decisive. * * * it is important to keep in mind that it seldom happens that the application of one test can give a satisfactory answer, and that ordinarily it is the interplay of several factors, properly weighted for the particular case, which must furnish the final answer" (Idem.).
4. WORDS AND PHRASES; INDEBTEDNESS.—The term indebtedness is restricted to its usual import which "is the amount which one has contracted to pay for the use of borrowed money."

REVIEW of a decision of the Court of Tax Appeals.

The facts are stated in the opinion of the Court.

*Angel S. Gamboa* for Kuenzle & Streiff, Inc.

*Solicitor General Ambrosio Padilla, Assistant Solicitor General José P. Alejandro* and *Special Attorney Librada del Rosario-Natividad* for the Collector of Internal Revenue.

BAUTISTA ANGELO, *J.:*

This is a petition for review of a decision of the Court of Tax Appeals, as later modified, declaring petitioner liable for the total sum of ₱33,187.00 as deficiency income tax due for the years 1950, 1951 and 1952.

Petitioner is a domestic corporation engaged in the importation of textiles, hardware, sundries, chemicals, phar-

maceuticals, lumbers, groceries, wines and liquor; in insurance and lumber; and in some exports. In the income tax returns for the year 1950, 1951 and 1952 it filed with respondent, petitioner deducted from its gross income certain items representing salaries, directors' fees and bonuses of its non-resident president and vice-president; bonuses of some of its resident officers and employees; and interests on earned but unpaid salaries and bonuses of its officers and employees. The income tax computed in accordance with these returns was duly paid by petitioner.

On July 2, 1953, after disallowing the deductions of the items representing directors' fees, salaries and bonuses of petitioner's non-resident president and vice president; the bonus participation of certain resident officers and employees; and the interests on earned but unpaid salaries and bonuses, respondent assessed and demanded from petitioner the payment of deficiency income taxes in the sums of ₱26,370.00, ₱53,865.00 and ₱44,112.00 for the years 1950, 1951 and 1952, respectively. Petitioner requested for the re-examination of this assesment, and on June 8, 1955, respondent modified the same by allowing as deductible all items comprising directors' fees and salaries of the non-resident president and vice president, but disallowing the bonuses insofar as they exceed the salaries of the recipients, as well as the interests on earned but unpaid salaries and bonuses. Hence, for the years 1950, 1951 and 1952, respondent made a new assessment and demanded from petitioner as deficiency income taxes the amounts of ₱10,147.00, ₱26,783.00 and ₱20,481.00, respectively. Petitioner having taken the case on appeal to the Court of Tax Appeals, the latter modified the assessment of respondent as stated in the early part of this decision.

From this decision both parties have appealed, petitioner from that portion which holds that the measure of the reasonableness of the bonuses paid to its non-resident president and vice president should be applied to the bonuses given to resident officers and employees in determining their deductibility and so only so much of said bonuses as applied to the latter should be allowed as deduction, and respondent from that portion of the decision which allows the deduction of so much of the bonuses which is in excess of the yearly salaries paid to the respective recipients thereof.

The law involves here is Section (a) (1) and (b) (1) of the National Internal Revenue Code, the pertinent provisionss of which we quote:

"SEC. 30. *Deductions from gross income.*—In computing net income there shall be allowed as deductions—

(a) *Expenses:*

(1) *In general.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; * * *

* * * * * * *

(b) *Interest:*

(1) *In general.*—The amount of interest paid within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations the interest upon which is exempt from taxation as income under this Title."

It would appear that all ordinary and necessary expenses paid or incurred in carrying on a trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, may be allowed as deductions in computing the taxable income during the year. It likewise appears that the amount of interests paid within the taxable year on any indebtedness may also be deducted from the gross income. Here it is admitted that the bonuses paid to the officers and employees of petitioner, whether resident or non-resident, were paid to them as additional compensation for personal services actually rendered and as such can be considered as ordinary and necessary expenses incurred in the business within the meaning of the law, the only question in dispute being how much of said bonuses may be considered reasonable in order that it may be allowed as deduction.

It should be noted that petitioner gave to its non-resident president and vice president for the years 1950 and 1951 bonuses equal to 133-½% of their annual salaries and bonuses equal to 125-⅔% for the year 1952, whereas with regard to its resident officers and employees it gave them much more on the alleged reason that they deserved them because of their valuable contribution to the business of the corporation which has made it possible for it to realize huge profits during the aforesaid years. And the Court of Tax Appeals ruled that while the bonuses given to the non-resident officers are reasonable considering their yearly salaries and the services actually rendered by them, the bonuses given to the resident officers and employees are, however, quite excessive, the court saying on this point that "there is no special reason for granting greater bonuses to such lower ranking officers than those given to Messrs. Kuenzle and Streiff." Petitioner now disputes this ruling insofar as the resident officers and employees are concerned contending that the same is not in accordance with the usual pattern to be followed in determining the reasonableness of a given compensation because it ignores the nature, extent and

quality of the services actually rendered by its resident officers and employees.

It is a general rule that "Bonuses to employees made in good faith and as additional compensation for the services actually rendered by the employees are deductible, provided such payments, when added to the stipulated salaries, do not exceed a reasonable compensation for the services rendered" (4 Mertens, Law of Federal Income Taxation, Sec. 25.50, p. 410). The condition precedents to the deduction of bonuses to employees are: (1) the payment of the bonuses is in fact compensation; (2) it must be for personal services actually rendered; and (3) the bonuses, when added to the salaries, are "reasonable * * * when measured by the amount and quality of the services performed with relation to the business of the particular taxpayer" (Idem., Sec. 25.44, p. 395). Here it is admitted that the bonuses are in fact compensation and were paid for services actually rendered. The only question is whether the payment of said bonuses is *reasonable.*

There is no fixed test for determining the *reasonableness* of a given bonus as compensation. This depends upon many factors, one of them being "the amount and quality of the services performed with relation to the business." Other tests sugested are: payment must be "made in good faith"; "the character of the taxpayer's business, the volume and amount of its net earnings, its locality, the type and extent of the services rendered, the salary policy of the corporation"; "the size of the particular business"; "the employees' qualifications and contributions to the business venture"; and "general economic conditions" (4 Mertens, Law of Federal Income Taxation, Sec. 25.44, 25.49, 25.50, 25.51, pp. 407–412). However, "in determining whether the particular salary or compensation payment is reasonable, the situation must be considered as a whole. Ordinarily, no single factor is decisive. * * * it is important to keep in mind that it seldom happens that the application of one test can give satisfactory answer, and that ordinarily it is the interplay of several factors, properly weighted for the particular case, which must furnish the final answer" (Idem.).

Considering the different tests formulated above, was the trial court justified in holding that the reasonableness of the amount of bonuses given to resident officers and employees should follow the same pattern for determining the reasonableness of the amount of bonuses given to non-resident officers?

Petitioner contends that it is error to apply the same measure of reasonableness to both resident and non-resident officers because the nature, extent and quality of the services performed by each with relation to the business

of the corporation widely differ, as can be plainly seen by considering the factors already mentioned above, to wit, the character, size and volume of the business of the taxpayer, the profits made, the volume and amount of its earnings, the salary policy of the taxpayer, the amount and quality of the services performed, the employee's qualifications and contributions to the business venture, and the general economic conditions prevailing in the place of business. And elaborating on these factors in connection with the business of petitioner, its counsel made a detailed exposition of the facts and figures showing in a nutshell that through the efficient management, personal effort and valuable contribution rendered by the resident officers and employees, the corporation realized huge profits during the years 1950, 1951 and 1952, which entitle them to the bonuses that were given to them for those years, especially having in mind the after-liberation policy of the corporation of giving salaries at low levels because of the unsettled conditions that prevailed after the war and the imposition of controls on exports and imports and on the uses of foreign exchange without prejudice of making up later for that shortcoming by giving them additional compensation in the form of bonuses if the financial situation of the corporation would warrant. As the General Manager Jung testified, the payments of bonuses were strictly based on the amount of work performed, the nature of responsibility, the years of service, and the cost of living.

While it may be admitted that the resident officers and employees had performed their duty well and rendered efficient service and for that reason were given greater compensation than the non-resident officers, it does not necessarily follow that they should be given greater amount of additional compensation in the form of bonuses than what was given to the non-resident officers. The reason for this is that, in the opinion of the management itself of the corporation, said non-resident officers had rendered the same amount of efficient personal service and contribution to deserve equal treatment in compensation and other emoluments with the particularity that their liberation yearly salaries had been much smaller.

Thus, according to counsel for petitioner the following is the contribution made by said non-resident officers of the corporation: "A. P. Kuenzle and H. A. Streiff, had dedicated abroad, especially in New York City, New York, U.S.A. and Zurich, Switzerland, their full time and attention to the services of Kuenzle & Streiff, Inc.; engaging themselves exclusively in the purchases abroad of the merchandise for the supply of the import business of the Kuenzle & Streiff, Inc., taking care of its orders

of the importation of the merchandise and also of their shipments to the said Company, making contacts and effecting transactions with the suppliers abroad, and directing, controlling and supervising the business operations and affairs of the company by directives. * * * They have been the policy-makers for the company. All decisions to be made by the company on important matters and anything and everything outside of the routinary have always been first determined by them and made only upon their instructions which had been strictly adhered to by the management of the Company. A. P. Kuenzle and H. A. Streiff have been the president and vice president, respectively, of the company for many years before 1950, 1951 and 1952, and during these particular years up to the present." Indeed, the trial court was justified in expressing the view that "there is no special reason for granting greater bonuses to such lower ranking officers than those given to Messrs. Kuenzle and Streiff." We concur in this observation.

The contention of respondent that the trial court erred also in allowing as deduction bonuses in excess of the yearly salaries of their respective recipients predicated upon his own decision that the deductible amount of said bonuses should be *only equal* to their respective yearly salaries cannot also be sustained. This claim cannot be justified considering the factors we have already mentioned that play in the determination of the reasonableness of the bonuses or additional compensation that may be given to an officer or an employee which, if properly considered, warrant the payment of the bonuses in question to the extent allowed by the trial court. This is specially so considering the post-war policy of the corporation in giving salaries at low levels because of the unsettled conditions resulting from war and the imposition of government controls on imports and exports and on the use of foreign exchange which resulted in the diminution of the amount of business and the consequent loss of profits on the part of the corporation. The payment of bonuses in amounts a little more than the yearly salaries received considering the prevailing circumstances is in our opinion reasonable.

As regards the amount of interests disallowed, we also find the ruling of the trial court justified. There is no dispute that these items accrued on unclaimed salaries and bonus participation of shareholders and employees. Under the law, in order that interest may be deductible, it must be paid "on indebtedness" (Section 30, (b) (1) of the National Internal Revenue Code). It is therefore imperative to show that there is an *existing indebtedness* which may be subjected to the payment of interest.

Here the items involved are unclaimed salaries and bonus participation which in our opinion cannot constitute indebtedness within the meaning of the law because while they constitute an obligation on the part of the corporation, it is not the latter's fault if they remained unclaimed. It is a well-settled rule that the term indebtedness is restricted to its usual import which "is the amount which one has contracted to pay for the use of borrowed money." [1] Since the corporation had at all times sufficient funds to pay the salaries of its employees, whatever an employee may fail to collect cannot be considered an indebtedness for it is the concern of the employee to collect it in due time. The willingness of the corporation to pay interest thereon cannot be considered a justification to warrant deduction.

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

*Parás, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepción, Endencia, Barrera,* and *Gutiérrez David, JJ.,* concur.

*Decision affirmed.*

[1] Old Colony R. Co. *vs.* Com. of Internal Revenue, 284 U. S. 552, 76 L. ed. 484, 52 S. Ct. 211; Deputy *vs.* Pierre S. Du Pont, 308 U. S., 498, 84 L. ed., 424, 60 S. Ct., 363.

[No. L-13661. November 28, 1959]

KO WAI ME, petitioner, *vs.* EMILIO L. GALANG, FRANCISCO DE LA ROSA and FELIX S. TALABAS, Commissioners of Immigration, respondents.

ALIEN, FINAL DECISION OF IMMIGRATION OF COMMISSIONERS ORDERING ALIEN ARRESTED; LEFT COUNTRY VOLUNTARILY; RE-ENTRY ONLY AT DISCRETION OF COMMISSIONER OF IMMIGRATION.—Where it appears that an alien had by a final decision of the Board of Immigration Commissioners been ordered arrested on a warrant of arrest for entry without inspection and admission, but that said alien left the country voluntarily at her own expense, *Held*: that the mere fact that the alien voluntarily left the Islands at her own expense did not have the effect of revoking the final order of deportation and the decision supporting the same and neither did erase the fact that the alien had entered the country surreptitiously and without permit from the proper authorities and with proper documents and is subject to deportation. This principle, that voluntary departure of a deportee sentenced to deportation did not opertate to revoke the final decision of deportation is the only reason or ground why the alien may only be authorized entry under the provision of subparagraph (2) paragraph (b) Section 29 of the Immigration Act, as amended.

APPEAL from a judgment of the Court of Instance of Manila. Narvasa, *J.*

The facts are stated in the opinion of the Court.

*Laude & Aguila* for the petitioner and appellee.

*Solicitor General Edilberto Barot* and *Solicitor Camilo D. Quiason* for the respondents and appellants.

LABRADOR, *J.:*

Appeal from a decision of the Court of First Instance of Manila, Hon. Gregorio S. Narvasa, presiding, granting the petition of Ko Wai Me to be admitted to the country as a temporary visitor.

The record discloses that on June 28, 1956, Chua Tao, alleged husband of the petitioner, asked the Department of Foreign Affairs, through the Bureau of Immigration, for the issuance of a temporary visitor's visa in favor of his alleged wife, petitioner herein Ko Wai Me. In its indorsement dated July 7, 1956, the Bureau of Immigration, through Commissioner Emilio L. Galang, recommended denial of said application. He called attention to the decision of the Board of Commissioners dated September 29, 1954, finding petitioner herein Ko Wai Me guilty of violation of the provisions of the Immigration Act, for having slipped into the country surreptitiously while a passenger aboard the *S. S. President Cleveland,* which arrived in Manila on January 9, 1953, without inspection and admission by, or permission of, the immigration authorities— she failed to apepar before the departure control officer when said vessel left port on January 10, 1959

(Annex "B", p. 14, Record). Inspite of this adverse comment the Secretary of Foreign Affairs authorized the issuance of a visitor's visa to petitioner Ko Wai Me, provided she is in possession of a valid Chinese Nationalist passport, a round trip plane or ship ticket to Hongkong and re-entry permit to Hongkong valid at least 6 months, and that the Philippine Consulate is satisfied after thorough screening that she is the wife of Chua Tao, a Chinese resident of the Philippines, and is otherwise admissible and without any derogatory information against her (Annex "C", p. 15, Record). Because of this order of the Secretary of Foreign Affairs, petitioner was granted a visa and she arrived in the port of Manila aboard a Cathay plane on September 28, 1956. On October 1, 1956, an inquiry was made by the Board of Special Inquiry and, thereafter, on October 4, 1956, the Board recommended that she be admitted for entry (Annex "G", p. 19, Record). It is to be noted that the Board expressly stated that a warrant for her arrest and deportation was issued on January 19, 1953, for having entered the country without inspection and admission by the immigration authorities and ordered deported in a decision of the Board of Commissioners on September 5, 1954, at her own expense. It stated that as she had not been deported as shown in her acts, she could be admitted as temporary visitor for 3 months from date of her arrival. The report of the Board of Special Inquiry passed through the hands of First Deputy Commissioner Francisco de la Rosa, who made the following note to Commissioner Galang:

"KO WAI ME qualifies for entry as a TEMPORARY VISITOR under the Cabinet policy in view of the satisfactory evidence showing her marriage to a local resident alien. In view of her proper documentation as she possesses a valid passport and a valid visa for entry into the Philippines and the fact that she is applying for temporary admission only, her case falls under Section 29 (b) (2) in which the Commissioner is given the discretion to permit her entry."(Exhibit "1", par. I).

The second Deputy Commissioner, according to Commissioner de la Rosa, was of the opinion that since the petitioner was a previous deportee who may be admitted only in the discretion of the Commissioner, the case should be referred to Commissioner Galang. So they endorsed the papers to the Commissioner, with the notation that appellant may be admitted only in the discretion of Commissioner Galang (t. s. n., p. 7–de la Rosa).

Upon receipt of the note or indorsement of the deputy commissioners, respondent Commissioner Galang on September 18, 1959, decided petitioner's exclusion and ordered his first deputy commissioner to effect exclusion (Exhibit "1–a). Commissioner de la Rosa did then issue,

in accordance with his superior's instructions, an order for petitioner's exclusion. The order is as follows:

"It appearing that the Commissioner of Immigration did not permit KO WAI ME, Chinese, female, 31 years of age, to enter as a temporary visitor, in the exercise of his discretion under Section 29 (b) (2) of the Philippine Immigration Act of 1940, as amended, and it further appearing that he manifested his decision to effect the exclusion of the above-mentioned applicant, per his instruction to the First Deputy Commission in his note to him of October 18, 1956, and in compliance therewith, it is hereby ordered that said Ko Wai Me be excludede in accordance with law."(Exhibit "2").

The legal ground upon which the exclusion was based is the provision of Section 29 (*b*) (2) of the Philipipne Immigration Act of 1940, as amended.

The court below held that as the order of exclusion issued for Commissioner Galang by First Deputy Commissioner De la Rosa has nothing to support it and that on the other hand, the Board of Special Inquiry had rendered a favorable decision upon the right of petitioner to enter, the Board of Commissioners rendered their unanimous decision disapproving the application without nothing to support it and said decision is a nullity.

"We have shown that the Order of Exclusion of the petitioner dated October 19, 1956 has nothing to support it. On the other hand, we have clearly established by documentary evidence that the Board of Special Inquiry of the Bureau of Immigration has rendered a favorable decision upon the question of the right of the petitioner to enter the Philippines. Such decision has become final, there having been no appeal and there being no showing that the three members of the Board who rendered a unanimous decision abused their authority. This Honorable Court therefore has jurisdiction to review the Order of Exclusion in this case with nothing to support it and which Order is therefore a nullity, it being directly attacked in this proceedings. Much more so, when there is no showing, as in this instant case, that the Board of Special Inquiry abused its authority when it found in its decision that the petitioner has a right to enter the Philippines. In relation to administrative decisons, it has been held:

> 'A verdict or decisions with nothing to support it is a nullity, at least when directly attacked. In such case, this court has jurisdiction to review, though, as we have generally held, the decision of the administrative officers upon the question of the right of an alien to enter the Philippine Islands is final when no abuse of authority is shown. (Edwards v. McCoy, 22 Philippine 598; Ngo Yao & Chua Eng Cheng v. Sheriff of Manila, 27 Phil. 378)".

There are no grounds legal or factual to support the conclusion arrived at by his Honor, the judge below. The report of the Board of Special Inquiry, Exhibit "E", expressly mentions the fact that petitioner herein had by a final decision of the Board of Immigration Commissioners (Annex "B") been ordered arrested on a warrant of arrest dated June 18, 1953, for entry without inspection and admission, but that she left the country voluntarily at her

own expense. On these facts, contained in the very decision of the Board of Special Inquiry, this Board concluded that petitioner had not been deported within the purview of the Philippine Immigration Act. This conclusion, i. e., of the Board of Special Inquiry that the voluntary departure of an alien ordered by a final decision of the Commissioners of Immigration to be deported is not deportation or exclusion if deportee leaves the country voluntarily and at her own expense, is, indeed, error. The mere fact that the petitioner herein voluntarily left the Islands at her own expense did not have the effect of revoking the final order of deportation and the decision supporting the same. The mere fact that she voluntarily departed at her own expense did not erase the fact that she had entered the country surreptitiously and without permit from the proper authorities and with proper documents and is subject to deportation. Evidently, the first deputy commisioner, in believing that the petitioner could only be admitted in the discretion of Commissioner, actually reversed the legal conclusion of the Board of Special Inquiry, that by the petitioner's voluntary exit from the Philippines at her own expense, the offense that had been committed against the Immigration laws had been completely wiped out. This principle, that voluntary departure of a deportee sentenced to deportation did not operate to revoke the final decision of deportation, is the reason or ground why the deputy commissioners had decided that petitioner may only be authorized entry under the provisions of sub-paragraph (2), paragraph (*b*), Section 29 of the Immigration Act, as amended, which is as follows:

"SEC. 29. (*a*) The following classes of aliens shall be excluded from entry into the Philipipnes:

* * * * * * *

'(15) Persons who have been excluded or deported from the Philippines, but this provision may be waived in the discretion of the Commissioner of Immigration: *Provided, however*, That the Commissioner of Immigration shall not exercise his discretion in favor of aliens excluded or deported on the ground of conviction for any crime involving moral turpitude or for any crime penalized under sections forty-five and forty-six of this Act or on the ground of having engaged in hoarding, black-marketing or profiteering unless such aliens have previously resided in the Philippines immediately before his exclusion or deportation for a period of ten years or more or are married to native Filipino women." (Pp. 15–16, Brief for the appellants).

Even admitting *arguendo* that as the petitioner herein is not a deportee because she had not been deported, because she voluntarily left the country at her own expense, then at least she is a person who has been excluded from the Philippines within the meaning of the first paragraph of the above section. The decision of the Board

of Immigration Commissioners ordering her deportation is conclusive evidence of this fact. As such she can only be admitted when the Commissioner waives the application of the law in favor of allowing the alien to enter the Philippines.

We fiind that the decision appealed from is not supported by the law, and we hereby set it aside dismissing the petition for *habeas corpus,* with costs in both instances against the petitioner-appellee.

*Parás, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Endencia, Barrera,* and *Gutiérrez David, JJ.,* concur.

*Judgment set aside.*

# DECISIONS OF THE COURT OF APPEALS

[No. 19974–R. June 30, 1960]

ENRIQUETA PAZCOGUIN, assisted by her husband SALUSTIANO PAZCOGUIN, plaintiffs and appellees, *vs.* NATIVIDAD DANTES and MAURA INDUCTIVO, defendants; MAURA INDUCTIVO, defendant and appellant.

1. COURTS; COURTS OF CONCURRENT OR COORDINATE JURISDICTION; POWER TO DISSOLVE ATTACHMENT GRANTED BY ANOTHER COURT, RULE; EXCEPTION.—The rule that a court has no power to interfere with the judgment or decree of another court of concurrent or coordinate jurisdiction has no application to the power to dissolve an attachment issued by another court or another branch of the same court, since it is its duty to decide the main issue and the legality or propriety of an attachment is merely corrollary thereto.
2. CONTRACTS; SIMULATED SALES; TRUST RELATIONSHIP.—In a simulated conveyance of real property, the vendee acquires no title thereto. He merely becomes a trustee of the property for its true owner. (Article 1456, New Civil Code; Sevilla *vs.* De Los Angeles, 51 Off. Gaz. 5590.)
3. ID.; ID.; FLAW IN TITLE, NOTICE OF; EFFECT.—A purchaser of property who acquires the same with notice of the flaw in the vendor's title cannot be considered as an innocent purchaser thereof for value and in good faith.

APPEAL from a judgment of the Court of First Instance of Manila. Amparo, *J.*

The facts are stated in the opinion of the Court.

*Cruz & Santos,* for defendant and appellant.
*Eduardo M. Peralta,* for plaintiffs and appellees.

NATIVIDAD, *J.*:

This is an action for the recovery of two parcels of land located in the City of Manila and damages. The defendants resisted the action on the ground of ownership, and in counterclaim asked for judgment for damages.

The facts are in the main not disputed. It appears that the two parcels of land involved in this action, situated in the district of Tondo, Manila, were formerly owned by plaintiff Enriqueta Pazcoguin, although the certificates of title covering them (Transfer Certificates of Title Nos. 35753 and 35754, Office of the Register of Deeds, City of Manila) appeared issued in the name of her sister Natividad Gabaldon. Sometime in the early part of May 1954, defendant Natividad Dantes approached Enriqueta Pazcoguin and asked for the latter's help to secure jewelries worth ₱30,000.00 from the H. E. Heacock Company of Manila, which required that some sort of security be placed for the transaction. As Natividad Dantes was her

old acquaintance, Enriqueta Pazcoguin told her that she could use the parcels of land in question, which were for sale, but that once her transaction with H. E. Heacock Company is consummated, she had to pay ₱15,000.00 therefor. Natividad Dantes agreed to this condition. Accordingly, on May 13, 1954, Natividad Gabaldon, upon order of Enriqueta Pazcoguin, executed in favor of Natividad Dantes a public deed conveying to the latter by way of absolute sale those two parcels of land for the imaginary sum of ₱10,000.00. Exhibit "B". Natividad Dantes recorded this deed of sale in the Office of the Register of Deeds for the City of Manila, and on the strength thereof Transfer Certificates of Title Nos. 36104 and 36105 covering the property were issued in her name. Notwithstanding this conveyance Enriqueta Pazcoguin remained in possession of said parcels of land.

Sometime in that month, May 1954, Enriqueta Pazcoguin learned that Natividad Dantes had failed to consummate her business transaction with H. E. Heacock Company. She, thereupon, saw Natividad Dantes and told her that she wanted the two parcels of land reconveyed to her. Thus required, Natividad Dantes executed in favor of Natividad Gabaldon a private deed reconveying to the latter the property in question and delivered to Enriqueta Pazcoguin Transfer Certificates of Title Nos. 36104 and 36105. As the deed of conveyance executed by Natividad Dantes in favor of Natividad Gabaldon was a private deed, the same was not recorded in the Office of the Registry of Property of Manila and the transfer certificates of title covering the parcels of land in question remained in the name of Natividad Dantes.

On July 12, 1954, upon further prodding from Enriqueta Pazcoguin, Natividad Dantes caused her attorney-in-fact Aniceto Vivas to execute in favor of Eliseo Gabaldon, a brother of Enriqueta Pazcoguin, a deed of mortgage of said two parcels of land to guarantee the payment of an imaginary loan of ₱10,000.00. Exhibit "F". An attempt was made by Eliseo Gabaldon to record this deed in the Registry of Deeds for the City of Manila, but the attempt failed due to certain technicalities.

Sometime in the month of August 1954, Natividad Dantes filed with the Court of First Instance of Manila a petition asking that new owner's duplicate certificates of Transfer Certificates of Title Nos. 36104 and 36105 be issued in her name, alleging that she had lost her copies thereof. Due to the opposition of Eliseo Gabaldon, who alleged that the owner's duplicate of said transfer certificates of title were not lost and were in the possession of Enriqueta Pazcoguin, this petition was denied.

On September 27, 1954, defendant Maura Inductivo filed in the Court of First Instance of Manila against Natividad Dantes an action, which was docketed as Civil Case No. 24161 of that court, for the collection of ₱10,000.00, plus attorney's fees and costs. This action was based on a promissory note purporting to have been executed by Natividad Dantes in favor of Maura Inductivo on May 30, 1954, for the sum of ₱10,000.00, payable 90 days after date with interest at the rate of 10% per annum. Exhibit "1–A". In that action, upon motion, an order for the preliminary attachment of the property of Natividad Dantes was issued and under this writ the parcels of land in question were attached and the attachment was noted on the back of Transfer Certificates of Title Nos. 36104 and 36105 on September 29, 1954. Natividad Dantes filed in that action an answer, in which she admitted the due execution of the promissory note upon which it was based; that she had not paid the capital and interest therein represented, either in whole or in part; and that she was willing to be adjudged liable for the payment of such principal and interest.

On October 9, 1954, while Civil Code No. 24161 was pending judgment, Enriqueta Pazcoguin brought the present action, and on that same date she caused a notice of *lis pendens* noted on the back of Transfer Certificates of Title Nos. 36104 and 36105.

On November 9, 1954, the Court of First Instance of Manila, upon motion, rendered in Civil Case No. 24161 judgment on the pleadings, ordering that the defendant therein, Natividad Dantes, pay to the plaintiff therein, Maura Inductivo, the sum of ₱10,000.00, plus interest thereon at 10% per annum, and the costs. Served with notice of this judgment, Natividad Dantes filed on November 17, 1954, a petition in which she alleged that she was thereby conveying to Maura Inductivo all her rights and interests on the parcels of land covered by Transfer Certificates of Title Nos. 36104 and 36105 in full settlement of that judgment. This petition was approved by the trial court. Maura Inductivo, however, failed to have said transfer certificates of title cancelled and new ones issued in her name, because of the notice of *lis pendens* issued in the instant case which was noted on the back of said transfer certificates of title.

Upon the above facts, the trial court rendered judgment, the dispositive part of which reads as follows:

"Upon the facts above stated, the court renders judgment in favor of the plaintiff and against the defendants and plaintiff is hereby declared owner of the two lots described in the complaint, and defendant Natividad Dantes is hereby ordered to execute the corresponding instrument of conveyance in favor of the plaintiff so that the certificates of title in her name will be cancelled and new ones issued in the name of the plaintiff Enriqueta Pazcoguin. The

attachment levied on said lots is dissolved. Plaintiff's claim for damages, as well as defendants' counterclaim are dismissed. With costs against the two defendants.

"SO ORDERED."

From this judgment, only defendant Maura Inductivo appealed.

Counsel for the appellant makes in his brief three assignments of error, to wit:

"I. The lower court erred in dissolving the attachment issued in Civil Case No. 24161 (Inductivo *vs.* Dantes) of the Court of First Instance (Branch V) of Manila, in favor of the herein defendant-appellant, which was levied on the two lots covered by Transfer Certificates of Title Nos. 36104 and 36105 of Manila in the name of Natividad Dantes, defendant in said Civil Case No. 24161.

"II. The lower court erred in dismissing the counterclaim of the defendant-appellant.

"III. The lower court erred in not dismissing the complaint as against defendant-appellant."

Counsel contends under the first assignment of error that as the writ of preliminary attachment under which the two parcels of land in question were attached was issued in Civil Case No. 24161 of the Court of First Instance of Manila by the Judge presiding Branch V thereof, under the rule, laid down in a number of decisions of the Supreme Court, to the effect that no court has power to interfere with the judgment or decree of a court of concurrent or coordinate jurisdiction having equal power to grant the relief sought, the trial court, in ordering in the instant case, which was then pending before Branch III of that court, the dissolution of that attachment, acted without or in excess of jurisdiction, and, consequently, the lien created by that attachment, which was noted on the back of Transfer Certificates of Title Nos. 36104 and 36105, is still valid and binding upon any person who may subsequently acquire said parcels of land prior to its dissolution by a competent court.

We do not share counsel's view. That it is well-settled in this jurisdiction that no court has the power to interfere with the judgment or decree of another court of concurrent or coordinate jurisdiction, and that the various branches of the Courts of First Instance of Manila are in a sense coordinate courts, there can be no dispute. We are, however, of the opinion that the rule has no application in the instant case. The issue here is dissolution of an attachment, a subject which is covered and governed by specific provisions of law. Section 14, Rule 59, of the Rules of Court provides that a third person claiming ownership of a property attached may vindicate his claim over the property by any proper action. And it has been held that the term "action", as used in the law, means "not any intermediary step taken in the course of the proceeding",

but "an action which originates an entire proceeding and puts in motion the instruments of the court calling for summons, answers, etc.", and that if a third party who claims ownership over the property can file a separate action, then "it must be admitted that the Judge trying such action may render judgment ordering the Sheriff or whosoever has possession of the attached property to deliver it to the plaintiff-claimant or desist from seizing it. Manila Herald Publishing Co., Inc. *vs.* Ramos, G.R. L-No. 4268, January 18, 1951. In another case (Malong *vs.* Ofilada, 52 O.G. 4257), in which the issue raised was the validity of an order of the Court of First Instance of Manila dissolving an attachment levied on a property under writ issued by the justice of the peace court of Puerto Princesa, upheld by the Court of First Instance of Palawan, the Supreme Court held that the dissolution was legal, for "if the trial court was competent and it was its duty to decide the main issue already adverted to, the point of legality or propriety of the issuance of the writ of attachment as a corollary thereto was properly before it and had to be passed upon and decided by it." Upon the facts and the law, therefore, the trial court, in dissolving the preliminary attachment in question, acted within its jurisdiction, and that its action is valid and legal.

Appellant, however, claims that as when the parcels of land in question were ceded to her by Natividad Dantes in payment of the judgment entered in Civil Case No. 24161 they were registered in the name of the latter and the lien created by the attachment issued in that case was still subsisting, she had acquired ownership of said property as an innocent purchaser for value.

Again, we do not share counsel's view. In the first place, Natividad Dantes did not acquire title to the parcels of land in question transmissible to a third person. The deed of conveyance executed by Natividad Gabaldon in her favor on May 13, 1954, was merely a simulated conveyance. It did not only conceal the true agreement of the parties, but that Natividad Gabaldon and her sister Enriqueta Pazcoguin did not intend to be bound by its terms. The agreement was only a *modus vivendi* intended to enable Natividad Dantes to place the property as collateral for an alleged transaction. Natividad Dantes, therefore, was, under the law, a mere trustee of the property for its true owner—Enriqueta Pazcoguin. Article 1456, New Civil Code; Sevilla *vs.* De los Angeles, 51 Off. Gaz. 5590. Moreover, we entertain serious doubts as to the validity of the claim of genuineness and authenticity of the promissory note executed by Natividad Dantes in favor of Maura Inductivo and the regularity of Civil Case No. 24161 brought for the collection of the amount therein

represented. Natividad Dantes' conduct in making an attempt to secure by fraud new owner's duplicate of the certificates of title covering the property, in filing an answer to Inductivo's complaint which amounted to a confession of judgment, in making cession of all her rights over the property in favor of Maura Inductivo immediately after she was served with notice of the judgment entered in that case against her, and in failing to appear in the trial of the instant case to defend her interests and that of her co-defendant, clearly indicates fraudulent collusion between her and Maura Inductivo to defeat the rights of Enriqueta Pazcoguin to the property in question. In the ordinary course of business, Natividad Dantes would not have conveyed to Maura Inductivo with such haste her alleged rights to those parcels of land which were worth more than the amount of the judgment. Moreover, even disregarding the above circumstances, Maura Inductivo cannot claim that she was a purchaser of the property in good faith and for value. When Natividad Dantes ceded to her all her rights and interests thereon, the instant action was already instituted, and notice of *lis pendens* was already noted on the back of the transfer certificates of title covering the property. Maura Inductivo, therefore, was charged with notice of the flaw in Dantes' alleged ownership thereof and she cannot be considered a vendee thereof for value and in good faith.

We, therefore, hold that the trial court committed no error in holding that the plaintiff-appellee Enriqueta Pazcoguin was the owner of the parcels of land in question and in ordering the reconveyance thereof to her.

In view of the conclusion arrived at in the discussion of the first assignment of error, further discussion of the second and third assignments of error is deemed unnecessary. It having been found that plaintiff-appellee Enriqueta Pazcoguin was the owner of the parcels of land in question and that it was the duty of the defendants to reconvey to her whatever rights they claim to have thereon, it goes without saying that the instant action was well-founded, and, consequently, appellant's counterclaim for damages and attorney's fees was properly dismissed.

FOR THE FOREGOING, we find that the judgment appealed from is in accordance with law and supported by the evidence. Consequently, said judgment is hereby affirmed, with the costs in this instance taxed against the appellant.

IT IS SO ORDERED.

*Sanchez* and *Angeles, JJ.*, concur.

*Judgment affirmed.*

[No. 22836–R. July 8, 1960]

CRESENCIO PEÑALOZA, plaintiff and appellee, *vs.* FERNANDO TY HONGA, defendant and appellant.

1. CONTRACTS; INTERPRETATION; "PACTO DE RETRO" DEED, CONSIDERED AS EQUITABLE MORTGAGE IN CASE AT BAR.—Where a deed entitled "Escritura de venta con pacto de retro" contains a covenant that part of the fruits of the property were to be retained by the vendee *a retro* as interest on the loan, and emphasizes that "at kailan paman at makasulong na ng nasabing halaga sa kanilan kabahagui, sa loob ng tanin na panahon, ang naturan kasulatan ay mawawalan na ng bisa, at pati ang sanglaan at obligaciones ng naturan at hinaharap na kasunduan", the contract entered into is merely an equitable mortgage.
2. ID.; SALE A RETRO; FAILURE TO PAY TAXES BY VENDEE A RETRO, EFFECT.—Payment of taxes constitutes evidence of great weight in support of a claim of title or ownership over lands. (Director of Lands *vs.* Aaron, et., al., CA-G.R. No. 10337-R, Oct. 28, 1954; Director of Lands *vs.* Baligod, et al., CA–G.R. No. 8748–R, May 13, 1955; Director of Lands *vs.* Depositario, et al., CA–G.R. No. 10308–R, May 20, 1955. A vendee a retro's omission, therefore, to pay the corresponding taxes is a clear indication that he does not believe himself the owner. Cruzado *vs.* Bustos, et al., 34 Phil., 17, 34–35.
3. ID.; MORTGAGE; PRESCRIPTION.—Where the mortgagee has to apply part of the fruits of the property delivered to him to the payment of the mortgage debt, he stands on the same footing of an antichretic creditor and his possession of such property cannot be the basis of acquiring title thereto by acquisitive prescription. Trillana *vs.* Manansala, et al., 51 O. G., No. 6, pp. 2911, 2913; Garcia *vs.* Arjona, et al., G. R. No. L–7279, October 29, 1955; Barretto *vs.* Barretto, 37 Phil., 234; Valencia *vs.* Acala, 41 Phil., 177.

APPEAL from a judgment of the Court of First Instance of Laguna. Muñoz Palma, *J.*

The facts are stated in the opinion of the Court.

*Jose A. Buendia* and *Rustico V. Nazareno,* for defendant and appellant.

*Cipriano Manansala,* for plaintiff and appellee.

SANCHEZ, *J.:*

Cresencio Peñaloza was owner of three parcels of land situate in barrio San Gabriel, San Pablo City. The first two, with areas of 35,317 and 12,938 square meters, registered under the Torrens system, are covered by Original Certificates of Title Nos. 1349 and 1350, respectively; the third was declared under Tax Declaration No. 60912 and assessed at ₱1,830.00.

On July 22, 1922, Cresencio Peñaloza, by a public document, gave the said three parcels of land as security for for a loan of ₱5,700.00, granted him by Ty Guan, father of defendant Fernando Ty Honga, and payable within 5 years. The document was labelled "biling mabibiling muli". Exhibit C and C–1. Two extensions for redemption were agreed upon: the first, for three years (Exhibit C); and the se-

cond, verbally, for two years. The parties covenanted that one-half of the produce of the lands was to be applied to the payment of the obligation; and the other half, to be given to Ty Guan as interest (pakinabang) on the 5,700-peso loan. Exhibit C–1.

About May 9, 1932, Ty Guan departed for China. The balance of the loan then—₱2,250.00—was transferred by Ty Guan to his son, Fernando Ty Honga. Whereupon, a new document denominated "Escritura de venta con Pacto de Retro", Exhibit D, was executed by Cresencio Peñaloza in favor of Fernando Ty Honga over the same three parcels of land, in consideration of the said sum of ₱2,250.00 and for a term of two years. Copy of this notarial document was not given to Cresencio Peñaloza who had confidence in Fernando Ty Honga. Peñaloza had to procure a certified copy of said deed, Exhibit D, from the Register of Deeds of Laguna on May 2, 1941. Exhibit 3. The true agreement of the parties, however, is that only two of the parcels of land, namely, those covered by Title No. 1349 and Tax Declaration No. 60912, were given as security for the reduced indebtedness of ₱2,250.00, under the same arrangement as to payment as that stipulated in the previous contract with Ty Guan. The other parcel, that set forth in Title No. 1350, was loaned by Peñaloza to Fernando Ty Honga to enable the letter to obtain credit facilities from the bank. An added reason given by Fernando Ty Honga to include the land covered by Title No. 1350 was to save the same from seizure on execution proceedings in a suit filed by Lim Tek Guan against Cresencio Peñaloza, where a deficiency judgment against the latter subsisted. In turn, Peñaloza was allowed to retain the northern portion of the land in Title No. 1349 which was planted with 200 coconut trees. This portion is in the possession of Peñaloza up to the present.

Since 1932, Peñaloza had been paying taxes on all the three parcels of land in question.

Before the two-year period elapsed, that is, in April, 1934, Andrea Evangelista, wife of Cresencio Peñaloza, offered to redeem the properties by tendering to Fernando Ty Honga the sum of ₱2,250.00 which she borrowed from one Margarita Reyes who was to take over the mortgage. Fernando Ty Honga side-tracked the offer with the excuse that the Torrens titles to the properties were with his father, Ty Guan, in China. Time and again, Peñaloza's offer to redeem the lands was blocked by defendant upon the same ground. Finally, plaintiff engaged the services of Atty. Antonio Barredo who, on May 5, 1947, and on May 27, 1947, wrote defendant formal letters demanding the release of the properties mortgaged. Exhibits E–1 and E–2. Thereafter, defendant told plaintiff that he

could only redeem said lands by paying double the amount of ₱2,250.00, or ₱4,500.00.

Due to lack of funds, plaintiff was able to start suit only on August 9, 1955.

The complaint prays that the *pacto de retro* deed be declared an equitable mortgage; that possession of the properties be turned over to plaintiff; and that defendant render an accounting of the fruits thereof and apply the proceeds therefrom to the indebtedness, and turn the balance over to plaintiff.

Defendant presented a three-pronged defense: First, that the contract of May 9, 1932 was in truth and in fact a sale with right to repurchase; second, that plaintiff's action has prescribed; and third, that defendant acquired ownership by adverse possession.

The judgment below declared that the deed of sale with *pacto de retro*, Exhibit D, is an equitable mortgage given as security for a loan of ₱2,250.00; and ordered defendant to: (1) submit to the court within 30 days from the finality of the judgment a statement of the income derived from the properties in question and expenditures made by him on the same during his period of possession from May 9, 1932; (2) release said properties and return the possession thereof to plaintiff upon payment by the latter of the sum of ₱2,250.00 or such amount as may be adjudged by the court as still owing defendant after the statement of account required shall have been approved; and (3) pay plaintiff the sum of ₱500.00 by way of attorneys' fees, plus the costs of the action, and such amount, if any, which may be fixed by the court, after the approval of the statement of account, to be due plaintiff at unrealized income from the properties aforesaid.

Defendant appealed.

Appellant's theory is this: The transaction of May 9, 1932 was a sale of the three parcels of coconut land therein described with right to repurchase within two years, in consideration of ₱2,250.00. Appellee having failed to repurchase the properties on time, appellant had his lawyer prepare an affidavit of consolidation. With this affidavit, he applied for and obtained, with the help of Atty. Alfonso Farcon, the issuance in his name of Torrens Titles Nos. 14793 and 14794 in lieu of the original titles to two of the parcels. In 1941, he mortgaged the lands covered by said titles to Dy Bun Chin and Tan C. Sing. The mortgage deed, acknowledged before Notary Public Alfonso Farcon, together with the titles, was burned. He is in possession of all the properties involved, enjoying the fruits therefrom, and paying the taxes thereon. Appellant denied that the transaction between him and appellee was an offshoot of

a previous one had between the latter and the former's father, Ty Guan.

1. Was the transaction a sale with right to repurchase or an equitable mortgage?

Appellant presented no evidence as to the origin of the transactions culminating in the execution of the deed of sale with *pacto de retro,* Exhibit D, on May 9, 1932. On the other hand, appellee positively declared that Exhibit D was but a continuation of the former obligation contracted by appellee with appellant's father. In the words of the trial Judge, appellee appeared to the court "as an old man of 73 years of age with sincere and honest motives and not a 'blackmailer' as defendant would want to picture him". Appellee's testimony on this score stands.

On close scrutiny, Exhibits C and C–1 yield not merely broad hints as to the nature of the original transaction. Exhibit C employed the words "Matubos" (redeem) and "panahon paluguid" (extension). Exhibit C–1 speaks of coconut lands mortgaged (niugan nasasanla) and a convenant between appellee and Ty Guan, whereby ½ of the fruits of the properties were to be retained by the latter as interest on the loan of 5,700.00 (bilang pakinabang ng aking salaping halagang LIMANG LIBO AT PITONG DAAN PISO) ₱5,700.00 na sinasaysay ng naturan kasulatan) referring to the *pacto de retro* deed executed between the two; and emphasized that "at kailan paman at makasulong na ng nasabing halaga sa kanilang kabahagui, sa loob ng tanin na panahon, ay ang naturan kasulatan ay mawawalan na ng bisa. at pati ang sanglaan at obligaciones ng naturan at hinaharapa na kasunduan". No unusual stretch of imagination is necessary to show that the foregoing point to only one conclusion: the agreement was an equitable mortgage–not a *pacto de retro* sale.

If the first agreement covering the three parcels of land with a consideration of ₱5,700.00 could not be *pacto de retro* sale, a *fortiori* the novated transaction, Exhibit D, for merely ₱2,250.00—less than one-half the original amount—could not have been a *pacto de retro* sale—it was also a mere mortgage.

But the foregoing is not all. In 1932, the lands had a total market value of ₱10,000.00. The alleged vendor retained possession of part thereof. They continued in the tax rolls under the name of appellee who had been paying the taxes thereon from 1932 up to the present. Appellant, in effect, had been extending the period of payment by staving off redemption. These, too, are convincing evidence that the agreement was not a sale with *pacto de retro* but an equitable mortgage. Article 1602, Civil Code.

Upon a claim that appellant's documents were burned, he advanced the theory that he consolidated the title.

The following, from the decision below, sufficiently answers this contention:

"The claim of defendant that he executed an affidavit of consolidation of ownership and that the Titles were transferred to his name is not substantiated by any evidence worthy of credit and belief. On this point we have only the testimony of defendant who naturally is a biased and prejudiced party and whose declarations on the matter have not been corroborated by any other reliable and competent proof. It is significant that Atty. Alfonso Farcon, who allegedly helped and assisted the defendant in the execution of the affidavit of consolidation and the issuance of new Titles to him, did not at all corroborate such allegations of defendant. Atty. Farcon was absolutely silent as the point."

Indeed, loss of papers during the last war had been an ever ready excuse to put up oral testimony which, as in this case, has been found to be wanting in probity. Enriquez *vs.* Pelante, et al., CA–G. R. No. 10808–R, May 20, 1955, citing: De Leon vs. Dy Kiet, 43 O. G., No. 8, pp. 3141, 3144.

True, one Ng Sio paid taxes on the lands in question purportedly on behalf of appellant. But the first payment Ng Sio ever made was in 1952 and next was in 1955. These payments obviously were thought of after appellant was already cognizant of appellee's determination to recover the lands—an eleventh hour effort to conjure a sale out of a mortgage.

Appellant also leans on the circumstance that, in 1941, he mortgaged the lands. There is nothing much in this. Appellant, it will be recalled, was allowed by appellee to mortgage the property described in Original Certificate of Title No. 1350. Said isolated act of appellant would not prove that he has considered himself owner thereof. For, if he were, then he should have driven appellee from the portion possessed by the latter, paid continually the taxes on the lands. A real property owner is conscious of his obligation to pay real estate taxes. This, on the one hand. On the other, he fears distraint of that property for tax delinquency. Appellant's omission in this regard is a clear sign that he "did not believe himself to be the owner of the land he claims"; but, instead, recognized ownership in another person—appellee. Cruzado *vs.* Bustos, et al., 34 Phil., 17, 34–35. Payment of taxes, it must be remembered, constitute evidence of great weight in support of a claim of title or ownership over land. Director of Lands *vs.* Aaron, et al., CA–G.R. No. 10337–R, October 28, 1954; Director of Lands vs. Baligod, et al., CA–G.R. No. 8748–R, May 13, 1953; Director of Lands *vs.* Depositario, et al., CA–G.R. No. 10308–R, May 20, 1955.

We conclude, therefore, that the real agreement between appellant and appellee in the execution of Exhibit D is that of equitable mortgage with one-half of the fruits of the

property to be applied to the discharge of the obligation secured thereby.

2. Appellant set up the defense of acquisive prescription.

Section 41 of the Code of Civil Procedure exacts that possession to ripen into ownership by acquisitive prescription must be "under a claim of title exclusive of any other right and adverse to all other claimants".

In essence, appellant's possession is that of a trustee for the benefit of his debter. For, he had to apply part of the fruits of the properties delivered to him to the payment of the debt. His possession is not adverse. He is an antichretic creditor. As was pointed out by the Supreme Court in Trillana *vs.* Manansala, et al., 51 O.G., No. 6, pp, 2911, 2913, "* * * several decisions of this court consistently hold that the antichretic creditor cannot ordinarily acquire by prescription the land surrendered to him by the debtor."* He therefore, cannot avail of the defense of acquisitive prescription. Garcia *vs.* Arjona, et al., G.R. No. L–7279, October 29, 1955.

3. Appellant argues that appellee's right of action has prescribed.

On this point, we may well quote extensively from the decision of the Supreme Court in Garcia *vs.* Arjona, et al., *supra, viz*:

"It is urged, also, that the present action is barred by the statute of limitations over 20 years having elapsed since the execution of Exhibit A. It appearing, however, that the intention of the parties thereto was merely to constitute a mortgage in order to quarantee the payment of a loan, we must conclude that Marcelino Arjona held the properties in dispute from 1932 to 1941, in conformity with the terms of said agreement, that is to say as a mere mortgagee, in the absence of satisfactory evidence to the contrary, and no such evidence has been introduced, or even offered by appellants herein.

Neither is there any evidence to the effect that the possession of Engracio Arjona from 1941 to 1951—as administrator of the estate of Marcelino Arjona—was adverse to plaintiff Felix Garcia. In fact, considering that Exhibit A had been prepared precisely by Engracio Arjona, he must be deemed to be aware of the intent of the parties thereto and to have held said properties in conformity with such intent. For this reason, and because his possession must be regarded a continuation of that of Marcelino Arjona, the possession of Engracio Arjona must be held to be identical in nature to that of Marcelino Arjona, namely, as agent of the mortgagee not adverse to plaintiff herein.

In other words, the possession of Marcelino Arjona and Engracio Arjona was not in derogation of the rights of plaintiff herein. Accordingly, the latter had no cause of action against them and the statute of limitations could not have run against him for said statute begins to run only from the accrual of the cause of action."

And, in Dayao *vs.* Diaz, et al., G.R. No. L–4106, May 29 1952, the rule is expressed in the following language:

* Citing: Barretto *vs.* Barretto, 37 Phil., 234; Valencia *vs.* Acala 43 Phil., 177.

"As a last resort the appellant invokes prescription. But there is no rule of law that the mortgagee or his assignee may, by prescription, acquire ownership over the property mortgaged if the mortgage is not redeemed within ten years."

The defense of statute of limitations fails.

4. Appellant assails the judgment below ordering him to render an accounting of the fruits of the lands.

Potent reasons there are to sustain the appeal on this score. Appellee testified that not all the fruits of the property could be applied to the payment of his obligation in Exhibit D, because part thereof, from time to time, were used to discharge his other accounts with appellant. Then, proceedings on the accounting would take time. Appellee, on the date he took the witness stand, was already 73 years old. We do not believe that such accounting would "assist the parties in obtaining a just, speedy and inexpensive adjudication" of this action. Rather, it would only cause additional expense, anxiety and delay. If only to honor Section 2, Rule 1 of the Rules of Court in adherence, accounting should not be exacted. More, the equities of the parties can be balanced in one equation: The fruits received by appellant is compensated with the continued use by appellee of ₱2,250.00 and the fact that the purchasing power of said amount which is to be returned is certainly lower now than it was in 1932.

Equitable considerations induce us to take the stand that appellee should pay appellant the sum of ₱2,250.00 and the latter should turn over to the former the possession of the properties held by him.

5. The matter of granting attorneys' fees is one within the discretion of the court. Article 2208-(11), Civil Code. The amount of ₱500.00 granted appellee, by way of attorneys' fees, is reasonable. It should not be disturbed.

WHEREFORE, the judgment appealed from is hereby modified and another is hereby rendered:

(1) declaring that the deed of sale with *pacto de retro,* Exhibit D, is in truth and in fact an equitable mortgage executed by plaintiff-appellee Cresencio Peñaloza in favor of defendant-appellant Fernando Ty Honga as security for a loan of ₱2,250.00;

(2) ordering defendant-appellant to return the properties described in the complaint now in his possession to plaintiff-appellee upon payment by the latter to the former of the sum of ₱2,250.00; and declaring, upon such return and payment, that the mortgage is concelled and of no further force or effect; and

(3) directing defendant-appellant to pay plaintiff-appellee the sum of ₱500.00, by way of attorneys' fees.

Costs in the court of first instance shall be borne by defendant-appellant.

No costs allowed on appeal.

IT IS SO ORDERED.

*Natividad* and *Angeles JJ.*, concur.

*Judgment modified.*

016302——5

[No. 18828-R. Marzo 26, 1960]

FAR EAST CHEMICAL CO., INC., demandante y apelante, *contra* CAMIGUIN MINING COMPANY, demandada y apelada; EL SECRETARIO DE AGRICULTURA Y RECURSOS NATURALES, tercerista y apelado.

1. LEY DE MINAS; PERTINENCIAS MINERAS; ARRENDAMIENTO, SOLICITUD DE.—Solamente pueden presentar su solicitud de arrendamiento aquellos que tienen previamente registradas pertinencias mineras y la solicitud se debe basar precisamente sobre dichas pertinencias. La concesión del arrendamiento, por tanto, no es mas que una secuela del derecho adquirido por el localizador (locator) de una pertinencia minera.

2. ID.; ID.; ID.; CONFLICTOS; DECISIÓN DEL DIRECTOR DE MINAS; APELACIÓN ADMINISTRATIVA; REVISIÓN POR LOS TRIBUNALES.—En conflictos sobre pertinencias mineras, una vez sometida la controversia al Director de Minas las partes deben agotar los recursos administrativos antes de acudir a los tribunales de justicia. El Artículo 61 de la Ley 137 del Commonwealth tal como está enmendado por la ley de la Republica Núm.-746 dispone claramente que la decisión del Director de Minas es apelable al Secretario de Agricultura y Recursos Naturales dentro de treinta días a contar desde la notificación de la orden o decisión a las partes afectadas, y la decisión del Secretario de Agricultura puede ser objeto de una revisión por los tribunales ordinarios dentro del período de treinta días de haber recibido la parte afectada la copia de la decisión. Por tanto, cuando una controversia sobre quien tiene derecho preferente a las minas aún está pendiente de resolución por el Director de Minas, una acción para pedir al Tribunal que determine quien tiene mejor derecho sobre dichas minas es prematura. (Miguel *contra* Reyes, R. G. No. L-4851, 31 de Julio de 1953).

APELACION contra una sentencia del Juzgado de Primera Instancia de Cagayan. Ladaw, *J.*

Los hechos aparecen relacionados en la decisión del Tribunal.

*José F. Aguirre,* en representación de la demandante y apelante.

*José T. de los Santos,* en representación de la demandada y apelada.

*Dominador E. Amurao,* en representación del tercerista y apelado.

HERNÁNDEZ, *M.:*

La corporación Far East Chemical Co., Inc. inició la presente acción contra la demandada Camiguin Mining Company, Inc., con oficinas en esta ciudad con el objeto de determinar la propiedad de ciertas pertinencias mineras y obtener la posesión de las mismas.

En la demanda se alega que la corporación demandante es dueña de las siguientes pertinencias mineras registradas en la Oficina del Registrador de Minas de la provincia de Cagayán como sigue:

| Nombre de la pertinencia | Localizador | Fecha del registro | Registrado en el libro | Página |
|---|---|---|---|---|
| Easy | Victoria Becker | Mayo 28, 1951 | I | 282–287 |
| George | Victoria Becker | Mayo 28, 1951 | I | 294–299 |
| Item | José Aguirre | Mayo 28, 1951 | I | 306–311 |
| Mike | Laura Dizon | Mayo 28, 1951 | I | 330–335 |
| Peter | Victoria Becker | Mayo 28, 1951 | I | 348–353 |
| Sugar | José Aguirre | Mayo 28, 1951 | I | 366–371 |

Que estas pertinencias han sido localizadas por los causantes de la demandante durante el período comprendido desde abril de 1947 a marzo de 1951, después del descubrimiento de depósitos de azufre en dichas pertinencias y después de haber sido deslindadas debidamente;

Que la demandante y sus causantes han estado en posesión pacífica y continua de dichas pertinencias a excepción de un corto período cuando los agentes de la demandada, valiéndose de engaño, entraron en las pertinencias hacia el mes de septiembre de 1951 y efectuaron mediciones y examen de los depósitos de azufre en dichas pertinencias; y

Que la demandada está decidida a excavar los depósitos de azufre para su venta en perjuicio de la corporación demandante.

La parte petitoria de la demanda es como sigue:

"WHEREFRE, it is respectfully prayed:

"(*a*) That defendant be compelled to disclose the facts upon which its alleged title and interest is based and that its pretensions to such title and interest in and to the claims involved be passed upon and determined by judgment of this Honorable Court;

"(*b*) *That defendant be declared in such judgment to have no rights, interest, or title of any kind whatsoever in and to the claims involved, and that the rights, interest, and title of plaintiff in and to same are valid as against the whole world;*

"(*c*) That defendant be perpetually restrained from asserting its supposed title and interest in and to these claims, and from interfering with the title and interest of plaintiff over same;

"(*d*) That defendant be ordered to pay plaintiff the sum of—

₱5,000.00, other than judicial costs; and for attorney's fees and expenses of this litigation,

₱15,000.00, for injury to plaintiffs business and interests.

"(*e*) That defendant be further ordered to pay the costs of suit.

"Plaintiff further most respectfully prays for such other reliefs and remedies as may by this Hon. Court be deemed just and equitable in the premises."

(R. on A. pp. 4–5)

La demandada en su contestación niega específicamente las alegaciones materiales de la demanda y en defensa especial afirmativa alega que ella es la verdadera dueña de las pertinencias mineras ocupadas por la misma;

Que existe pendiente en la Oficina de Minas la causa administrativa Núm. V–61 entre los causantes de la demandante por un lado y la demandada por otro sobre las mismas pertinencias mineras;

Que el Secretario de Agricultura y Recursos Naturales en el ejercicio de sus prerogativas legales sobre pertinencias mineras expidió a favor de la demandada un permiso temporal fechado el 3 de junio de 1952 autorizando a la demandada a extraer azufre de las pertinencias mineras reclamadas por la misma;

Que el permiso temporal expedido por el Secretario de Agricultura y Recursos Naturales a favor de la demandada para extraer azufre en las pertinencias es válida y legal;

Que debido al permiso temporal la demandada ha emprendido obras para explotar las minas habiendo invertido la cantidad de ₱70,000.00 hasta la fecha de la presentación de la contestación;

Que las pertinencias mineras de la demandante, son distintas y no se hallan incluídas en las de la demandada situadas en Caganganguan, Núms. 1 y 2, y Ensanada, Núms. 1 y 2, y que la demandante no tiene derecho de acción contra la demandada.

En la contestación de la demandada se alega, asímismo, que existe un defecto de la parte demandada puesto que el Secretario de Agricultura y Recursos Naturales debe ser incluído en la controversia entre las partes.

Antes de la presentación de su contestación, la Camiguin Mining Company presentó dentro del período reglamentario una moción de sobreseímiento por el fundamento de que estando pendiente de resolución definitiva la causa administrativa V–61, la demandante no había agotado todo el recurso administrativo que provee la ley y no tenía derecho de acción contra la demandada. En el curso de la prolongada discusión entre las partes sobre la referida moción de sobreseímiento se alegó por la demandada que el Secretario de Agricultura y Recursos Naturales había expedido a su favor una licencia temporal para extraer azufre de las pertinencias ocupadas por ella.

El Tribunal *a quo* después de oídas las partes dictó una orden cuya parte pertinente es la que sigue:

"* * * * * * *

"Among other things, the present action may be considered as an appeal to the Court, pursuant to Section 61 of the Mining Act, as amended by Section 3, Republic Act No. 746, from the order of the Secretary of Agriculture and Natural Resources, set forth in this 3rd Indorsement dated June 3, 1952, which order directs the issuance, in favor of the defendant, of temporary permits for extraction of sulphur from the contested mining claims."

(R. on A. pp. 47–48)

Más tarde a petición del Secretario de Agricultura y Recursos Naturales se concedió al mismo permiso para intervenir en la presente causa y en contestación, después de reiterar las alegaciones esenciales de la demandada, Camiguin Mining Company, alegó que el permiso concedido a la demandada para extraer azufre de las pertinen-

cias mineras reclamadas por la misma se ha hecho de acuerdo con la Sección 62 de la Ley del Commonwealth Núm. 137 vulgarmente llamada Ley de Minas, después de considerados los fundamentos de la petición de la demandada.

Al igual que la otra demandada el Secretario de Agricultura y Recursos Naturales contiende que el Tribunal *a quo* no había adquirido jurisdicción sobre la materia litigiosa. De lo expuesto se desprende que el Tribunal al decidir la moción de sobreseímiento formulada por la demandada Camiguin Mining Company consideró limitada la acción de la demandante sobre la validez de la orden del Secretario de Agricultura y Recursos Naturales concediendo permiso temporal a la demandada para extraer azufre.

Practicadas las pruebas de ambas partes, el Tribunal *a quo* fué de opinión que la orden del Honorable Secretario de Agricultura y Recursos Naturales es válida y legal, y ordenó el sobreseímiento de la acción interpuesta por la demandante.

En la presente apelación la demandante somete a nuestra consideración la siguiente relación de errores:

"1. The lower court erred in holding that it had no jurisdiction over the subject matter, except for the limited purpose of resolving the question of validity of issuance of the mines temporary permits.

"2. The lower court erred in not finding that the property involved belongs to plaintiff.

"3. The lower court erred in not finding that defendant's claims were a falsification and a fraud.

"4. The lower court erred in holding that the issuance of the mines temporary permits involved under the 3rd indorsement dated June 3, 1952 of intervenor was valid and legal.

"5. The lower court erred in setting aside the order of default dated March 5, 1953, and its judgment by default dated May 8, 1953.

"6. The lower court erred in dismissing this case."

Bajo el primer señalamiento de error los apelantes contienden que el Tribunal *a quo* erró al declararse incompetente para determinar quien de las partes contendientes tiene derecho a las pertinencias mineras arriba mencionadas. Antes de seguir adelante conviene exponer brevemente las teorías de ambas partes en esta causa. La demandante contiende que ellá por 1933 Frank W. Sapp descubrió yacimientos de azufre y reclamó los mismos para sí y para Henry Becker, padre, registrándose las reclamaciones en la Oficina del Registrador de Terrenos el 2 de diciembre de 1933. (Exhs. "R" y "FF") Henry Becker, padre, empezó a construir caminos en las pertinencias y a extraer azufre en 1947. Henry Becker, padre, más tarde entregó las pertinencias a su hijo, Henry Becker, hijo, quien ocupó y amojonó las mismas en nombre de sus asociados como arriba queda apuntado.

En agosto 16, 1952 los nuevos reclamantes por conducto de Henry Becker, Jr. vendió y transfirió sus derechos a la

corporación demandante. Estaban en posesión los reclamantes de las pertinencias arriba mencionadas cuando en 15 de septiembre de 1951 José Gaza y Alfredo P. Ángeles, después de registrar ocho (8) declaraciones ficticias de amojonamiento (location) en la Oficina de Minas de Tuguegarao subrepticiamente entraron en las pertinencias con algunos ingenieros de mismas de la Oficina de Minas para un examen geológico de los depósitos. Noticioso Henry Becker, hijo, de esta intromisión en sus pertinencias, formalizó una protesta el 3 de octubre de 1951 ante el Director de Minas y, por este motivo, se abrió el expediente administrativo Núm. V–61.

Por otro lado la demandada Camiguin Mining Company, una corporación debidamente registrada, contiende que es dueña de cuatro pertinencias mineras llamadas Enzanadas, Núms. 1 y 2, y Caganganguan, Núms. 1 y 2, siendo estas pertinencias debidamente registradas en la Oficina del Registrador de Minas; que la demandada ha pedido de la Oficina de Minas la medición de tales pertinencias y la medición se ha llevado a cabo por dicha oficina, y los correspondientes planos preparados por los agrimensores de minas de la referida oficina han sido aprobados por el Director de la misma oficina; que más tarde la corporación solicitó un permiso provisional para extraer azufre habiendo prestado la fianza exigida por la Oficina de Minas y, en efecto, ha empezado a extraer azufre para abastecer los pedidos de la entidad gubernamental, National Power Corporation.

Como ya queda indicado la Oficina de Minas decidió el incidente sobre la expedición de un permiso provisional a favor de la demandada. El Secretario de Agricultura y Recursos Naturales decidió el incidente de la protesta el 16 de junio de 1952 (Véase Exh. "23") y la presente acción se presentó ante el Tribunal *a quo* el 22 de agosto de 1952.

Bajo el primer señalamiento de error se contiende por la demandante que si bien el Director de Minas tiene jurisdicción para resolver conflictos y disputas sobre amojonamiento de pertinencias mineras, esta jurisdicción no se extiende para resolver conflictos sobre arrendamiento de minas. En apoyo de su contención la apelante cita el Art. 61 de la Ley 137 del Commonwealth tal como está enmendada por la Ley de la República Núm. 746 comunmente conocida como la Ley de Minas que se lee como sigue:

"SEC. 61. *Conflicts and disputes arising out of mining locations shall be submitted to the Director of Mines for decision:* Provided, That the decision or order of the Director of Mines may be appealed to the Secretary of Agriculture and Natural Resources within thirty days from the date of its receipt. In case any one of the parties should disagree from the decision or order of the Director of Mines or of the Secretary of Agriculture and Natural Resources, the matter may be taken to the court of competent jurisdiction within thirty days from the receipt of such decision or order; otherwise, the said

decision or order shall be final and binding upon the parties concerned."

Para sostener su criterio la apelante se atiene tenazmente al primer párrafo de dicho artículo que arriba hemos subrayado.

Se contiende por la apelante que la controversia entre las dos corporaciones es sobre el arrendamiento de las pertinencias mineras que las partes reclaman. La ley dispone que la solicitud de arrendamiento se debe presentar dentro de cuatro (4) años a contar desde la fecha en que las pertinencias han sido registradas en la Oficina del Registro de Minas. Para la mejor comprensión de la controversia entre las partes creemos oportuno acotar el Artículo 68 de la Ley de Minas, tal como está enmendado, que regula la solicitud y aprobación de esta clase de arrendamiento:

"SEC. 68. *Application for a lease on a mining claim shall be filed within four years from the date of the recording of the claim in the office of the mining recorder. Failure to file such application within the period abovementioned shall be deemed on abandonment of the mining claim,* and the land embraced within such claim shall thereupon be open to relocation in the same manner as if no location of the same had ever been made: Provided, *That the original locator,* his heirs, *or his assigns* who has or have *thus failed* to file a lease application on the claim shall not be entitled to relocate, directly or indirectly, the land embraced within such claim, or any part thereof."

(Las cursivas son nuestras.)

La ley, por consiguiente, es clara que solamente pueden presentar su solicitud de arrendamiento aquellos que tienen previamente registradas pertinencias mineras y la solicitud se debe basar precisamente sobre dichas pertinencias. La concesión del arrendamiento por tanto no es más que una secuela del derecho adquirido por el localizador (locator) de una pertinencia minera. En el caso que nos ocupa hay una controversia formal entre las partes no solamente sobre quien tiene derecho al arrendamiento sino sobre quien tiene derecho a las pertinencias mineras y a la identidad de éstas. Las alegaciones de la demanda sobre todo de la petitoria apoyan esta conclusión. Una vez resuelta la cuestión de las pertinencias, ya hemos indicado, la cuestión del arrendamiento no es más que una consecuencia de los privilegios que la ley concede a uno que tiene una pertinencia minera debidamente registrada. Un examen detenido de las voluminosas pruebas que las partes han presentado en esta causa demuestra de una manera evidente que hay un conflicto sobre las pertinencias mineras objeto de la solicitud de arrendamiento. Como queda ya indicado la demandante reclama como suyas ciertas pertinencias mineras situadas en los sitios de Gaguitpit y Amando mientras que la demandada, Camiguin Mining Company, contiede que las pertinencias mineras que ella reclama están situadas en

los sitios de Enzanada y Caganganguan, distantes unos dos kilómetros de las pertinencias mineras reclamadas por la demandante.

La Ley de Minas provee que el Secretario de Agricultura y Recursos Naturales será el oficial ejecutivo encargado de poner en vigor las disposiciones de la referida ley por medio del Director de Minas que estará bajo su supervisión inmediata. Por razones fáciles de comprender el Director de Minas y el Secretario de Agricultura y Recursos Naturales están en mejor situación para proceder a la medición e identificación de las pertinencias mineras y a resolver conflictos sobre las mismas porque cuentan con subalternos técnicos para esta clase de trabajos, y por este motivo en conflictos de este género, una vez sometida la controversia al Director de Minas las partes deben agotar los recursos administrativos antes de acudir a los tribunales de justicia.

La sección 61 arriba acotada dispone claramente que la decisión del Director de Minas es apelable al Secretario de Agricultura y Recursos Naturales dentro de treinta días a contar desde la notificación de la orden o decisión a las partes afectadas, y la decisión del Secretario de Agricultura puede ser objeto de una revisión por los tribunales ordinarios dentro del período de treinta días de haber recibido la parte afectada la copia de la decisión. Los escritos de alegaciones de ambas partes en la presente causa admiten que la controversia principal sobre la identidad de las pertinencias mineras y la determinación de la parte que tiene derecho preferente a las mismas aún está pendiente de resolución por el Director de Minas y, por este motivo, entendemos que la demandante no tenía derecho de acción cuando se presentó la demanda de autos para pedir al Tribunal *a quo* determine quien tiene mejor derecho sobre las pertinencias mineras, objeto de controversia en la presente actuación. (Miguel *vs.* Reyes, G. R. No. L-4851, Julio 31, 1953)

Creemos, por consiguiente, que el Tribunal *a quo* no erró al resolver el conflicto en la forma como lo hizo. En vista de este criterio no debemos considerar por ahora las pruebas aportadas por el apelante sobre su alegado derecho preferente sobre las pertinencias mineras. Tampoco estamos dispuestos a considerar si la apelada, Camiguin Mining Company y sus agentes, cometieron fraude al obtener sus pertinencias mineras. Éstas son cuestiones que adecuadamente el Director de Minas puede resolver con mayor facilidad después de una inspección ocular por medio de sus agrimensores de minas como así ha ordenado dicho Director.

Pasemos ahora a considerar la procedencia o ilegalidad del permiso temporal que fué expedido por el Secretario de

Agricultura y Recursos Naturales que la apelante discute en sus señalamientos 4, 5 y 6. La orden del Secretario de Agricultura y Recursos Naturales concediendo el permiso temporal aparece en su endoso de fecha 3 de junio de 1952. Como dicho endoso contiene una exposición bastante detallada de la controversia entre las partes, creemos oportuno acotar el mismo en su totalidad:

"3rd Indorsement
June 3, 1952

"Respectfully returned to the Director of Mines, Manila.

"It appears from the record that mining claims Caganganguan I & II and Enzanada 1 & 2 for which temporary permits for the extraction of sulphur therefrom are being applied for by the Camiguin Mining Company, had been surveyed by Florentino Calderón, Deputy Mineral Surveyor of the Bureau of Mines from August 20, to September 17, 1951; that during the said survey no protest nor adverse claim had been registered by any party thereto; that after the said survey, or to be more precise on October 4, 1951, Henry Becker, Jr., and his two other associates filed a protest against the said claims; that on account of the said protest, an investigation thereof had been conducted by a representative of the Bureau of Mines; that in the investigation conducted on December 6, 1951, both parties submitted their respective evidence in support of their respective claims; that the only evidence submitted by Henry Becker, Jr. and his two associates in support of their claims were the declarations of locations of their mining claims reserving their right, however, to introduce rebuttal evidence at the ocular inspection of the areas in conflict if and when the Bureau of Mines may deem convenient; that on December 22, 1951, the Director of Mines denied the request of the protestants (Henry Becker, Jr. and his associates) for an ocular inspection of the premises, and accordingly directed the continuation of the hearing of the case on January 10, 1952, solely for the purpose of receiving rebuttal evidence from said protestants; that protestants did not seek the reconsideration of this order; that on January 10, 1952, the protestants, thru their counsel, requested the postponement of the hearing for the reason that their witnesses were not available, but upon objection by counsel for the respondent Company, said request was denied by the investigator; that in view of the failure of the protestants to proceed with the presentation of their rebuttal evidence, the case was considered as submitted for decision; and that *thereafter, the Director of Mines without any written request from any of the parties concerned* addressed simultaneous letters to the herein parties requiring them to deposit ₱500.00 each to cover the expenses for an investigation and ocular inspection of the permits in question.

"Respondent-petitioner claims in its letter dated April 2, 1952 and May 6, 1952 both addressed to this Office that it has a pending contract with the National Power Corporation to supply the latter with sulphur; that the transaction cannot be consummated by reason of the delay in the final disposition of this case; that it fears that in view of the alleged dilatory tactics of the protestants it will take a long period yet before the case is finally decided by the Bureau of Mines; and that on account of such delay, they also fear that they would lose the prospect of consummating their proposed contract with the National Power Corporation. They also claim that they had already invested a considerable amount of money in this mining business and any further delay in deciding this case would result to

their damage and prejudice. It further claims that there are many unauthorized persons who are extracting sulphur from its mining claims and there is a possibility that due to careless extraction of sulphur therefrom by these unauthorized parties, fire may break out therein and for that reason it is very imperative that respondent company employ the services of security guards to protect the said mining claims therefrom. Finally, it alleges that it is willing to post a bond in an amount which the Bureau of Mines may determine to fully protect the government and adverse claimants from loss or damage should temporary permits be issued in its favor for the extraction of mineral from the aforesaid mining claims.

"After a careful consideration of the facts and circumstances surrounding the case, this Office believes that it would be to the best interests not only to the government but also of the parties concerned if temporary permits may be issued in favor of the Camiguin Mining Company for the extraction of sulphur from the mining claims in question. At any rate, the government and the adverse claimants are well protected by the filing of a bond in an amount sufficient enough to protect them from damage or losses by reason thereof.

"WHEREFORE, the Director of Mines is hereby directed to issue in favor of the Camiguin Mining Company, temporary permits for the extraction of sulphur from the aforesaid mining claims subject to the condition that the said company should post the necessary bond therefor in an amount to be determined by the Director of Mines and approved by this office.

FERNANDO LÓPEZ
*Secretary of Agriculture*
*and Natural Resources.*"

Debido a la objeción del causante de la demandante sobre la expedición del permiso temporal el Secretario de Agricultura resolvió la objeción como sigue:

"*June 16, 1952*

"Atty. José F. Aguirre
Room 212 Consolidated Investment Bldg.
Plaza Goiti, Manila

"SIR:

"This is with reference to your letter of June 11, 1952 protesting against the issuance of temporary permits in favor of the Camiguin Mining Company for mining claims Caganganguan I & II and Enzanada 1 and 2 located in the island of Camiguin, municipality of Calayan, Cagayan.

"In your said protest you claim that the granting of temporary permits to the Camiguin Mining Company is contrary to law alleging that 'the applications involved do not satisfy the prerequisite of prima facie well founded'.

"An examination of the records of the case show that the mining claims in question of the Camiguin Mining Company had been duly registered in the Office of the Mining Recorder of Cagayán; that the same had been surveyed by a mineral surveyor of the Bureau of Mines from August 20 to September 17, 1951; that said survey had been approved by the Director of Mines from August 20 to September 17, 1951; that said survey had been approved by the Director of Mines; that during said survey no protest nor adverse claim had been filed by any party thereto; that during the investigation of this case in the Bureau of Mines, the only evidence you have presented in support of your clients' claim thereto was the declaration of location of their mining claims; *that an examination*

*of the declaration of location of said mining claims reveals that the areas covered thereby are situated in sitios different from those covered by the declarations of location of the mining claims of the Camiguin Mining Company;* that you have not presented any oral evidence during the said investigation to support your contention that the areas covered by your clients' mining claims are identical to and are the same with those covered by the mining claims of the Camiguin Mining Company.

"Under the facts above-stated, this Office believes and so holds that the issuance of temporary permits in favor of the Camiguin Mining Company for the mining claims in question is in accordance with the law on the matter and the rules and regulations promulgated thereunder. At any rate, and as stated in the 3rd Indorsement dated June 3, 1952 of this Office authorizing the Director of Mines to grant the issuance of the temporary permits asked for by the Camiguin Mining Company, the Government and your clients are fully protected from any loss and damage that may be incurred as a result of the issuance of the said temporary permits, it appearing that the Camiguin Mining Company has already posted two bonds in the total amount of ₱48,000.00 to secure the government and the adverse party from any such loss or damage that may be occasioned by reason thereof.

"IN VIEW OF THE FOREGOING, your protest against the issuance of the temporary permits above referred to in the 3rd Indorsement dated June 3, 1952 of this Office should be, as hereby it is, denied.

"Very respectfully,

FERNANDO LÓPEZ
*Secretary of Agriculture*
*and Natural Resources.*"

(Las cursivas son nuestras)

De los dos documentos arriba copiados se desprende que el Secretario de Agricultura y Recursos Naturales se decidió a expedir el permiso temporal porque las pruebas articuladas por las partes ante el Director de Minas justificaban *prima facie* la expedición de tal permiso y por otro lado porque la demandada había presentado una fianza razonable para la protección de los intereses, no solamente del gobierno sino de la misma demandante y en el segundo documento el Secretario de Agricultura dice, además, que un examen de los sitios y linderos de las pertinencias mineras objeto de controversia demuestra *prima facie* que las reclamadas por el apelante están situadas en diferentes sitios. Como ya hemos dicho la resolución final del conflicto sobre la identidad de las pertinencias mineras está bajo la consideración del Director de Minas y se impone una inspección ocular para resolver el conflicto aparte de que no se ha dado todavía oportunidad al Director de Minas para resolver si la demandante en consonancia con los Artículos 61 y 68 arriba acotados tiene derecho a presentar una solicitud de arrendamiento.

En este estado de las cosas entendemos que la prudencia aconseja que se mantenga la decisión del Secretario de Agricultura sobre la expedición del permiso temporal.

Se tilda de errónea la orden del Tribunal dejando sin efecto su orden de rebeldía y permitiendo a la demandada, Camiguin Mining Company, a presentar su contestación. Queda dicho que la demandada presentó una moción de sobreseímiento, que parcialmente fué sostenida por el Tribunal; la demandada, en lugar de presentar su contestación, presentó una moción de reconsideración pidiendo el sobreseímiento de toda la demanda, pero no señaló a vista la moción y el Tribunal, a petición de la demandante, declaró en rebeldía a la demandada, Camiguin Mining Company, Inc. Más tarde, sin embargo, el Tribunal dejó sin efecto la orden de rebeldía, a petición de la demandada, Camiguin Mining Company. Una petición de esta índole va dirigida a la sana discreción del Tribunal. Habida consideración al hecho de que hasta entonces el Secretario de Agricultura y Recursos Naturales no era parte, y a las circunstancias arriba expresadas, declaramos que el Tribunal *a quo* no abusó de su discreción al dejar sin efecto la orden de rebeldía.

POR LAS CIRCUNSTANCIAS ARRIBA EXPUESTAS, procede confirmar, como por la presente confirmamos, la sentencia de que se apela con las costas a cargo de la apelante.

ASÍ SE ORDENA.

*Peña y Amparo, MM.*, estan conformes.

*Se confirma la sentencia.*

[No. 25660—R. May 26, 1960]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* PEDRO ANG-ANGAN, GAVINO MANZANO ET AL., accused and appellants.

1. CRIMINAL LAW; EVIDENCE; TESTIMONY OF WITNESS; CREDIBILITY.—The reasonableness or probability of a witness testimony bears on his credibility. The most positive testimony of a witness may be contradicted by circumstances in evidence, by admitted facts, by the fact that the testimony is contrary to common observation or experience, or the common principles by which the conduct of mankind is governed. The courts are not required to believe that which they judicially know to be unnatural, unusual and improbable when tested by the rules which govern men of ordinary capacity and intelligence in a given matter.

2. ID.; ID.; RETRACTED EXTRA-JUDICIAL CONFESSION AS SOLE EVIDENCE; EFFECT.—Where the only evidence linking an accused to the commission of the crime charged is his extra-judicial confession which he had retracted and evidence of involuntariness of its execution has been presented, and there is reason to believe the untruth of the confession, in the appreciation of the evidence the doubt should be resolved in his favor, for "it is better to err for the accused than against the accused".

APPEAL from a judgment of the Court of First Instance of Ilocos Sur. Bautista, *J.*

The facts are stated in the opinion of the Court.

*Tagayuna, Arce* and *Rabaino,* for accused and appellant Pedro Ang-Angan.

*Luis Bello, Jr.,* for accused and appellant Gavino Manzano.

*Assistant Solicitor General Pacifico P. de Castro* and *Solicitor Jaime M. Lantin,* for plaintiff and appellee.

ANGELES, *J.:*

Pedro Ang-angan, Gavino Manzano and Sosimo Suza were charged with robbery in the Court of First Instance of Ilocos Sur. Before the trial, and on motion of the fiscal, the case against Sosimo Suza was dismissed because he died on January 26, 1955. The case proceeded against the other two defendants. After the prosecution had concluded presenting the evidence, the accused Gavino Manzano, thru his counsel, waived the right to present evidence in his behalf. The promulgation of the decision against Gavino Manzano was deferred by the court until after the evidence on behalf of Pedro Ang-angan has been presented. After the trial, the court rendered a decision finding Pedro Ang-angan and Gavino Manzano guilty of the crime charged and sentenced each to suffer an indeterminate penalty of from two (2) years, eleven (11) months and eleven (11) days of *prision correccional* to eight (8) years and one (1) day of *prision mayor* with the accessory penalties of the

law, to indemnify jointly and severally the victims of the robbery, Aurelio Pascua and Felicidad Pascua de Guzman in the sum of ₱579.00 and ₱726.00, respectively, without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs. Both accused appealed from the decision.

The perpetration of the robbery and the concomitant circumstances leading to its accomplishment are not disputed by the appellants. Their plea for acquittal is anchored principally on the proposition that the evidence of the people has not established beyond reasonable doubt their identity as the perpetrators of the crime for which they stand charged in the case at bar. Alibi is another defense invoked by appellant Pedro Ang-angan. Only his singular testimony was offered in support of this defense. He claimed that on the night of the commission of the robbery he was in his house with the members of his family. He could not present corroborating witnesses to his defense of alibi, however, because on February 13, 1956, seven months before the trial of the case started, his wife and all his five children were massacred at Balingaoan, Candon, Ilocos Sur by the henchmen of mayor Alejandro Samonte motivated by the intense hatred of the latter against the former stemming from political feud. (t.s.n. p. 44, hearing on March 8, 1958.) That fact, immaterial as it is to the main issue, was offered as an explanation of appellant Ang-angan's failure to present corroboration to his defense of alibi which the court had rejected, because it comes only from "the interested and biased testimony of the accused Pedro Ang-angan", and it is a defense "easily fabricated." The person named Alejandro Samonte, referred to by appellant Ang-angan, was the incumbent mayor in the year 1956 of the municipality of Candon of which Balingaoan is a barrio. Said Alejandro Samonte was the first witness for the prosecution in this case. He was not called on rebuttal to deny the imputation made against him by appellant Ang-angan.

As witness for the prosecution, mayor Samonte declared that on the morning of March 7, 1952, he was informed by his policemen that on the previous night a robbery took place in the house of Aurelio Pascua and Felicidad Pascua de Guzman in barrio Balingaoan, Candon, Ilocos Sur. Upon receiving the information, "I told Sgt. Martinez (PC) that my suspect is Pedro Ang-angan. * * * I suspected that the one responsible in that robbery is Pedro Ang-angan." Acting on his suspicion that Pedro Ang-angan had taken part in the robbery, he ordered Sgt. Martinez, patrolman Florencio Consolacion and other policemen to go to the house of Pedro Ang-angan and to bring him to the municipality. (t.s.n. pp. 6–7, hearing on Sept. 11, 1956.)

Patrolman Consolacion declared that in obedience to the order of mayor Samonte, Sgt. Martinez, other policemen and he proceeded to the house of Pedro Ang-angan in barrio Balingaoan. They met Ang-angan in his house at about 9 o'clock in the evening of March 7. On their way back to the municipality, the arresting officers repeatedly asked Ang-angan if he had taken any part in the robbery. Ang-angan at first denied having taken part in the robbery. So, "A. We tried our best to investigate. Q. And when you tried your best to investigate him, what happened? A. He confessed to us that he participated. Q. What did he confess in substance, will you please relate? A. He confessed that he and Gavino Manzano and Sosimo Suza went to the house of Aurelio Pascua. Q. After investigating Pedro Ang-angan in Balingaoan, what did you do next? A. We brought him to town. Q. Where did you bring him, in what particular place in town? A. At first in the house of the mayor. Q. And then later? A. In the police department. (pp. 9–10, t.s.n., testimony of patrolman Consolacion, hearing on Sept. 11, 1956.)

The testimony of patrolman Consolacion that Ang-angan confessed his participation in the robbery to him, was contradicted by mayor Samonte who declared that at about 1 o'clock in the morning of March 8, the arresting officers together with Pedro Ang-angan arrived in his house. Ang-angan was brought to him by the officers because he (Ang-angan) refused to admit that he took part in the robbery. He investigated Ang-angan orally and the latter confessed to him about having taken part in the robbery. After Ang-angan had "confessed everything to me", the PC soldiers and policemen "took the statement of Pedro Ang-angan." (t.s.n. pp. 7–8, hearing on Sept. 11, 1956.)

The statement of Pedro Ang-angan is Exhibit B for the prosecution, and Exhibit 7 for the defense. The statement is in the form of typewritten questions and answers contained in one page and a half of legal size paper.

Continuing his testimony, mayor Samonte declared that the statement was signed by Pedro Ang-angan voluntarily in his presence and sworn to by the affiant before him. The statement on its face shows that it was sworn to only on March 9, 1952. Much emphasis has been given to the presence of suspicious circumstances surrounding the execution by Ang-angan of his confession, and from which the defense has posed the following questions: How come that it took so long a time to prepare such a short confession and to secure the signature of Ang-angan thereon when it has been declared that he had admitted voluntarily to mayor Samonte his participation in the crime since the early morning of March 8, 1952? How come that the oath was administered by mayor Sa-

monte when there was the justice of the peace who could administer the jurat to the affiant. If Ang-angan had already admitted his guilt to mayor Samonte, why did Sgt. Martinez have to take Ang-angan to the PC headquarters at Narvacan, Ilocos Sur, and later on to be returned to the municipal jail of Candon and once in jail only then was his confession prepared and sworn to before mayor Samonte? The foregoing fact on which the last question is premised was testified to by Ang-angan without refutation. Neither mayor Samonte nor the policeman who investigated Ang-angan have given any explanation thereof. We, therefore, shall have to look for the explanation from the testimony of appellant Ang-angan himself.

Before proceeding with the examination of the testimony of Ang-angan, however, we deemed it wise to narrate before hand the facts of the case as revealed from the evidence of the prosecution. Proof of the occurrence of the robbery was given by the singular testimony of Aurelio Pascua, without corroboration, the only person in the house when the robbery was committed, and the only eye-witness to the commission of the crime. His testimony is as follows:

At about 11 o'clock in the evening of March 6, 1952, while he (Aurelio Pascua) was sleeping in his house at Balingaoan, Candon, Ilocos Sur, he was awakened by a voice calling "Apo" three times. He opened the window and saw three men in the yard. One of them said that they were soldiers on patrol and asked him to come down as they have something to tell him. As he opened the door of his house, two of them (whom the witness identified by their names at the trial in 1956 as Pedro Ang-angan and Sosimo Suza) rushed into the house with their guns pointed at him while the third man (also identified during the trial as Gavino Manzano) remained downstairs. Once inside the house, the man (Pedro Ang-angan) demanded for his money, and when he (witness) did not answer, that man tied his hands and asked for the keys. Pascua answered that the keys were in his pocket. Obtaining possession of the keys, Ang-angan ransacked his (Pascua's) trunk as also the two trunks of his sister, Felicidad Pascua de Guzman, while Sosimo Suza was guarding him. With the loot in their possession, the robbers left the house with a parting threat that if he will call for help, they will return to kill him. After the robbers had left the house, Pascua found that the robbers had taken from his trunk cash money amounting to ₱579.00, a pair of shark-skin pants valued at ₱15.00, and a silk polo shirt worth ₱5.00. That same night, he (Pascua) went to the house of his brother Norberto "and informed him what happened to me." Norberto in turn reported the matter to Isaias

Gacusan, the barrio lieutenant. When the robbery took place, Felicidad Pascua de Guzman, who was also living in the house, was in Baguio. Summoned by her brother Aurelio, and after examining her trunks, she found that her cash of ₱600.00, a pair of gold rings costing ₱35.00, a pair of simple earrings valued at ₱8.00, a ring costing ₱3.00, and a comb ornamented with gold valued at ₱10.00, or a total of ₱726.00 were gone.

In regard to the identity of Pedro Ang-angan as one of the perpetrators of the robbery on the night in question, Aurelio Pascua declared as follows: He has known Pedro Ang-angan since childhood; he is his barriomate; their houses are separated by a distance of about 200 meters only; Ang-angan was not wearing mask when he went up the house; the moon was bright; he clearly recognized Ang-angan, and he was the one who tied his hands, ransacked the trunks, and pointed a gun at him, when he (Pascua) was investigated by the authorities he told them that he could identify their faces, if they were presented to him; in reporting the robbery to his brother Norberto all that he said was "I informed him that somebody came to rob us." After giving the foregoing answer, the court propounded to the witness a very leading question, thus:

"COURT:

Q.—Did you not tell Norberto Pascua that it was Pedro Ang-angan?

A.—I did, your Honor." (t.s.n. p. 31, hearing on September 11, 1956.)

Confronted with the affidavit executed by him on March 8, 1952, Exhibit 1–Ang-angan, and after identifying his signature thereon, Aurelio Pascua declared that when he executed his affidavit, Exhibit 1–Ang-angan, he was "asked to relate the details of what happened to him on the night of March 6, 1952", and he clearly understood that what he was required to state in his sworn statement, Exhibit 1–Ang-angan, was that he was to give the names of the robbers known to him. (t.s.n. pp. 2–3, hearing on Nov. 5, 1956.) With full knowledge and understanding, however, that he was required to disclose the name of the person or persons known to him as having committed the robbery, as appearing in the transcript of stenographic notes, in no less than five repeated questions to him by the court and four questions propounded to him by counsel for Ang-angan as to why he did not mention the name of Pedro Ang-angan as one of those who robbed him on the night in question, his reiterated answers had been one and the same "I did not remember then". And more significant is the answer given by him to the following question: "Q. Why is it that it is only now four years after March 6, 1952 that you remember Pedro Ang-angan as one of those who allegedly came to

rob you on March 6, 1952, since he is your neighbor and well-acquainted to you? A. It is only now that I come to remember because this is the only time I come to Vigan." And again on one of the questions of the court, thus: "Q. Yes, but why did you not tell his name since you knew him already? A. I did not remember to mention his (name), your honor." (see pp. 3–6, t.s.n., hearing on Nov. 5, 1956.)

There is another piece of documentary evidence in the record which corroborates in no less degree the conclusion clearly deducible from the foregoing testimony of the witness. Thus, in the trial of a case in the justice of the peace court of Candon against Gavino Manzano for a violation of Article 179 of the Revised Penal Code, for using military uniform and insignia on the night of the robbery in the house of Aurelio Pascua, the latter was a witness for the prosecution. The justice of the peace before whom the case was tried, wrote down an abstract of his testimony, which was presented as evidence in the present case as Exhibit 3–Ang-angan, and was identified as the notes taken personally by the justice of the peace at the trial. In the said abstract of the testimony of Aurelio Pascua we find the following: "Between 11:00 and 12:00 o'clock A.M. on March 6, 1952, I was at home. When I was lying, somebody made a noise and I saw one of them wearing fatigue and with insignia and was armed with a carbine. The other was also armed with a small gun, and (the) third companion hid himself behind the bank. The two persons who stayed near the stairs, told us (me) to go down in order to ask something because we (they) are PC soldiers on patrol. I opened the door of our house and aimed their guns to me. The two persons who called on me were the ones who met me at the door. * * *

*"That very night was the first time I saw the persons above-stated.* It was bright at that time because there was the moon."

It is to be noticed that Pascua never mentioned the name of Pedro Ang-angan as one of the three persons. What he said was "That very night was the first time I saw the persons above-stated." Parenthetically, the case was dismissed by the court on September 27, 1952. Exhibits 2, 2–A and 2–B.

The repeated answers—I did not mention the name of Pedro Ang-angan, because I did not remember then—given by Pascua to the questions of the court and of counsel clearly show that his failure to mention the name of Ang-angan was not mere lapses of the tongue or misunderstanding of the questions. The questions were clear and in simple words. Yet, his answers were always the same—"I did not remember to mention then". On re-

direct examination Pascua insinuated, however, that his failure to mention the name of Ang-angan was due to his fear of Pedro Ang-angan that if he would reveal his (Ang-angan's) name to the authorities he would be killed. (t.s.n. pp. 7–8, hearing on Nov. 5, 1956.) On questions of the court, however, he again reiterated that his failure to mention the name of Ang-angan was because "I did not remember." To quote from his testimony:

"COURT:

Q.—A moment ago you were asked by the court why you did not mention Pedro Ang-angan as one of those who broke into your house notwithstanding that you knew him already before March 8, 1952, you said you were not asked that question; now you explained that you did not reveal the identity of Pedro Ang-angan because you were afraid, which is the truth?

A.—Because of my fear that is why I went to declare in the municipal building before the mayor and the police force, so that, just in case any harm will happen to me, they will know what to do, Your Honor.

Q.—Precisely, why did you not tell the name of the persons from whom such harm may come from?

A.—I did not remember, your honor.

Q.—Before you went to the municipal building you were prepared to name the person or persons that came to your house that night of March 6, 1952?

A.—Yes, Your honor.

Q.—Why then did you not name those persons who trespassed in your house?

A.—I did not remember, Your Honor.

Q.—You mean to say that at the time you were trying to remember Pedro Ang-angan, you cannot recollect his name?

A.—Not that, Your honor, I know his name but I did not remember to mention it."

(t.s.n. pp. 9, 10, hearing of Nov. 5, 1956.)

The other witnesses for the prosecution were mayor Alejandro Samonte, the first to be placed on the witness stand, followed by patrolman Florencio Consolacion. The substance of their testimony has already been narrated herein above. Felicidad Pascua de Guzman was also another witness, but her testimony was limited to the loss of money and other things in her trunks.

The evidence for the appellant Pedro Ang-angan is as follows:

On the night of March 6, 1952, Ang-angan with the members of his family were in his house at Balingaoan, Candon, Ilocos Sur; the following day, he was in his house doing decoration works as he was informed by the barrio teacher that his house was selected as the model barrio house; on the night of March 7, 1952, PC soldiers with some Candon policemen arrived in his house and, without any warrant of arrest, took him away from his house; while they were on their way from Balingaoan to the poblacion, they told him that something was lost in Balingaoan and asked him to tell the truth as they were

laying the blame on him; they brought him to the house of Mayor Samonte where he was maltreated by said Mayor Samonte and Sgt. Martinez, the latter using the butt of a gun to strike him in an effort to force him to admit the crime; after maltreating him for almost 10 minutes, Mayor Samonte ordered the policemen to bring the accused to the jail threatening him that if he will not tell the truth "he will suffer the consequence and suffer the worst of his administration", and further saying that he (Mayor Samonte) was laying the blame on the accused-appellant even though it was not his (appellant's) real doing because he did not belong to his (Mayor's) political party; he was brought by the PC soldiers to the PC Headquarters at Narvacan, Ilocos Sur but early the following morning, March 8, 1952, he and two companions were brought back to the municipal jail of Candon where a PC soldier and Candon policeman took turns in maltreating him; for some length of time the PC soldiers and policemen delivered fist blows on him and when Mayor Samonte arrived at the municipal jail, the latter also delivered fist blows on him; after having been thus maltreated, he was brought to the office of Mayor Samonte and the latter threw in front of him a piece of paper which has some writings and ordered him to sign; when he picked up the paper in an attempt to read its contents, the mayor remarked "Loco as if you are like somebody" and at the same time snatching same from him and, standing and going beside the appellant, he (mayor Samonte) ordered the latter to sign, giving him (accused) a stern warning that should he not sign the paper, he must have to choose between "black and white" which the accused understood to be "life and death"; due to the maltreatment he received and the warning given him by mayor Samonte, he was seized with fear so he affixed his signature to the paper without reading and knowing the contents of the same believing that there are higher authorities wherein he can seek justice. After that he was detained incommunicado in the municipal jail of Candon, Ilocos Sur for 20 days and later transferred to the provincial jail of Vigan, Ilocos Sur as detention prisoner where he was confined for more than one year. That on February 13, 1956, henchmen of mayor Samonte massacred his wife and all his five children at Balingaoan, Candon, Ilocos Sur due to political hatred so that none of them could testify and corroborate his testimony.

The extrajudicial confession of appellant Ang-angan states in substance the following: That on the night of March 6, 1952 Sosimo Suza and Gavino Manzano came to his house; he did not know what they wanted; Manzano was wearing an army fatigue with insignias of PC attached to the collar of his shirt and was armed with a carbine

and Sosimo Suza was wearing a colored shirt and light blue pants with a pistol caliber .25; they took supper in his house after which the two asked him to accompany them to the house of the barrio lieutenant; he accompanied them to go to the barrio lieutenant but upon reaching an isolated house, Manzano told him that he would be killed if he will not do what was ordered him to do; that house at the isolated place was the house of Aurelio Pascua; he asked Manzano what were they going to do at the house, but Manzano refused to answer; when they were near the house, Manzano "ordered me to stay north of the said house to guard so that I will notify them if there (were) persons coming; he obeyed the order of Manzano; after a while Manzano and Suza came back and they left the place, and they proceeded towards his house; when they reached his (Ang-angan's) house, Manzano handed him a bill of ₱10.00 and two silver coins of ₱1.00 each, after which Manzano and Suza left, and he has not seen them since.

Appellant Ang-angan was convicted of the crime charged because, according to the trial court, the *corpus delicti* has been duly established and the extrajudicial confession of Ang-angan together with the extrajudicial confession of Gavino Manzano, although the latter is admissible only against the declarant, may be used, nevertheless, to rebut the defense of Ang-angan regarding his non-participation in the commission of the crime.

Generally, the findings of fact made by the trial court are entitled to great weight because it has seen and heard the witnesses during the trial, whereas the appellate court has no opportunity to observe the behaviour of the witnesses on the stand. Appellate courts may be justified in disregarding the findings of fact of the lower court, however, if the latter had failed to take into consideration significant facts or has misinterpreted their application. The reasonableness or probability of a witness' testimony bears on his credibility. The most positive testimony of a witness may be contradicted by circumstances in evidence, by admitted facts, by the fact that the testimony is contrary to common observation or experience, or the common principles by which the conduct of mankind is governed. The courts are not required to believe that which they judicially know to be unnatural, unusual and improbable when tested by the rules which govern man of ordinary capacity and intelligence in a given matter. In the case at bar, it is apparent that the trial court had failed to consider in its true light certain significant facts in relation to the identification of appellant Ang-angan as the one who, allegedly together with Sosimo Suza, went up the house of the complainant. The reiterated answers of the only eye-witness to the commission of the crime that he

failed to mention the name of Pedro Ang-angan in his sworn statement because he "did not remember" and of never having mentioned said name to the authorities until the trial of the case on September 11, 1956, because he "did not remember", although he was very familiar with appellant Ang-angan by the reasons and circumstances disclosed in his testimony, have rendered the identification of appellant Ang-angan highly doubtful. Such a conduct of the witness tested by the rules which govern man of ordinary capacity and intelligence are contrary to common observation or experience, or to the common principles by which the conduct of mankind is governed. The strongest natural impulse of any man under the circumstances would have been to name the perpetrators of the crime committed against his person and property. That appellant Ang-angan did not go up the house of Aurelio Pascua, is also corroborated by Pascua's testimony given before the justice of the peace court of Candon in the trial of the case against Gavino Manzano for a violation of article 179 of the Revised Penal Code. In his testimony in that case, Pascua declared that the persons who had gone up to his house on the night in question (without mentioning the name of anyone of them), became known to him only on that very night. That "was the first time I saw the persons." His belated excuse that it was fear of bodily harm that has impelled him to act in the unnatural way as he did is more of a pretext than a reason. Precisely, disclosure by him of the name of Ang-angan to the authorities would enable the latter to know against whom to protect him and to pick up the suspect should any harm befall him. Anyhow, if the fear of the witness could be given any color of truth and reality, the fact that Ang-angan stood charged of the crime and had been detained for over a year and later released because he posted a bond for his provisional liberty, are reasons that render unbelievable the excuse of the witness, for, the fact is, that even until the trial of the case not a single hair of the witness was ever touched by Ang-angan.

In attempting to justify the unnatural conduct of witness Pascua for not revealing to the authorities the name of appellant Ang-angan, the trial court said that "The isolated circumstance that Aurelio Pascua in his statement Exhibit 1–Ang-angan, on March 8, 1952, did not name the accused and he merely stated that he recognized them and could easily identify them if presented to him did not completely destroy his testimony in the main. The complainant Aurelio Pascua only did what a cautious and discreet man could have done under the circumstances. He told the court his inspiring fear of the accused Pedro Ang-angan even as he was on the witness-stand." The

fear was not a reason at all but merely a pretext. Thus, on redirect examination of witness Pascua he again reiterated in answer to the question of the court that his reason for not revealing the name of Ang-angan was that "he did not remember to mention it."

Disregarding, therefore, as there are reasons to disregard, the testimony of Aurelio Pascua in respect to the identity of appellant Ang-angan, we are thrown back on the only source of evidence of his participation in the crime—on his extrajudicial confession. True, indeed, that in his extrajudicial confession he admitted participation in the commission of the crime to the extent that he stood guard in the yard to watch for people who might be coming. The admission of such confession, however, has rendered the testimony of Pascua as to the presence of Ang-angan in the house more incredible. If Ang-angan was in the yard, as stated in his confession, he could not have been in the house, as testified to by Pascua. The question, therefore, is whether the extrajudicial confession of appellant Ang-angan is sufficient to warrant his conviction of the crime charged. In this regard, account must be taken of important and weighty circumstances which may affect the truth of the confession. True, indeed, that, as the trial court has observed, the confession contains some exculpatory statements which if it were a mere fabrication of the authorities the latter would not have included them in the confession. In the instant case, however, such a reason is weakened if not totally destroyed by circumstances surrounding the execution of the confession. If it were true that appellant Ang-angan had voluntarily admitted and confessed to mayor Samonte at about 1:00 o'clock in the morning of March 8, 1952 his participation in the crime, why is it that such statement was not reduced to writing at that very moment and had it signed by the accused? While allegedly Ang-angan had already made the confession to mayor Samonte, why had he to be transferred to the custody of the PC officers and policemen *for further investigation*? Why, after such investigation, had the accused to be taken to the headquarters of the PC at Narvacan, Ilocos Sur and afterwards to be returned to the municipal jail of Candon, Ilocos Sur? The evidence sufficiently discloses that only after his return from the PC headquarters and his confinement again in the municipal jail that the accused signed his confession. That was on March 9, 1952, or about thirty-four hours after the accused had supposedly made his confession to the mayor. And why would such a confession be sworn to before the mayor when there was the justice of the peace who could administer the oath to the affiant? The unusual circumstances surrounding the execution of

the confession have not been explained either by the mayor or the policeman who investigated Ang-angan. On the other hand, the testimony of appellant Ang-angan of the torture and maltreatment to which he had been subjected in the hands of the mayor and other authorities of the town have not been rebutted or denied. Under the circumstances and considering that the only evidence against appellant Ang-angan as to his presence at the place of the commission of the crime is based on his extrajudicial confession which he had retracted and evidence of involuntariness of its execution has been presented, and there is reason to believe the untruth of the confession, we believe that in the appreciation of the evidence the doubt should be resolved in his favor, recalling the expression of a jurist of renown that it is better to err for the accused than against the accused.

With respect to appellant Ang-angan's defense of alibi, it has been said, it is one easily concocted and, therefore, to sustain it clear and convincing proof must be presented, the evidence in the record is undisputed showing that his failure to present corroborative evidence was due to the misfortune that the persons who could corroborate him on that matter had been massacred by the henchmen of mayor Samonte. Other persons, under this situation, would have resorted to fabricated testimony to establish his defense of alibi. He did not choose this path, instead he commended his case to the sound judgment of the court.

We shall now consider the evidence against Gavino Manzano. At the trial of the case, Manzano was positively identified by Aurelio Pascua as one of those who took part in the robbery. He was recognized by Pascua because the moon was shining brightly and there was a lamp near the window of the house illuminating the yard. He had no mask covering his face. And he was wearing an army fatigue uniform. It is true that Pascua could not give the name of Manzano when the former gave his statement on March 8, 1952. The reason was because that was the first time that Pascua saw Manzano, but he stated that he could identify him if he would see him again. In fact he was identified at the trial.

Gavino Manzano executed a sworn statement on March 11, 1952. Exhibit A. In his sworn statement, he substantially stated the following: He knows Ang-angan and Suza; he came to know Ang-angan only on March 5, 1952 when he and Suza went to Ang-angan's house; on March 5, 1952 at about 3 o'clock in the afternoon, he met Suza in Narvacan, Ilocos Sur; they talked of robbing some house; Suza informed him that there is a house in Candon, Ilocos Sur where there was money amounting to about ₱200.00; he asked Suza how he had come to know of the

house which they were going to rob, and Suza answered that he was told by his friend Pedro Ang-angan who is from Candon; both then went to Candon, arriving there at at about 6 o'clock in the afternoon of March 5, 1952; they proceeded to the house of Ang-angan at Balingaoan, Candon; the communicated with Ang-angan about their plan to rob; Ang-angan asked Suza for the other members of the gang, and Suza replied that the rest will probably be arriving later on; he told Ang-angan that if the other companions would not arrive they would proceed just the same as planned; Ang-angan indicated a house along the national road at Tablac, Candon where only three women were living; they agreed to rob that house; when they arrived at the place they first made some observation and when they found that it was dangerous because of the presence of many dogs, they desisted; they returned to the house of Ang-angan; Ang-angan proposed to rob a house nearby where there were only two occupants who had ₱200.00 cash; they slept in the house of Ang-angan; the next morning, March 6, 1952, he (Manzano) and Suza went back to Narvacan where they met Iving and Libring; at about 6 o'clock in the afternoon of March 6, 1952 he (Manzano) and Suza arrived at the house of Ang-angan; they took supper in the house, after supper, he and Suza told Ang-angan that they were ready to go to the house which they were going to rob about two kilometers west of Ang-angan's house; Ang-angan advised them that they will go to the house after the sounding of the whistle at 11 o'clock that evening of the Central Azucarera del Norte in the municipality; the appointed time having arrived, he (Manzano) wore his army fatigue uniform with PC insignias on the collar of the shirt complete with a fatigue cap and armed himself with a carbine, while Suza wore colored civilian clothes and armed himself with a pistol caliber .25; Ang-angan did not have any weapon; arriving at the house which they were to rob they talked of their plan to rob the house; they agreed that Suza and he would go up the house while Ang-angan would stay below to watch for any person who is coming; Ang-angan said that he was afraid to go upstairs because the occupants will recognize him; approaching the house, he called in loud voice "Apo"; he saw an old man peep from the window of the house and he told him that he was a PC soldier and wanted to talk to him; the old man opened the door of the house and at this precise time Suza rushed to the old man pointing at him his gun; he placed himself beside Suza and ordered the old man to light his lamp; the old man did as he was ordered; after lighting the lamp, the old man was ordered to lie down on the floor; they asked him for his keys which the old man handed to

them; while Suza was opening a wardrobe he noticed that the old man was going to stand up to get his bolo hanging at the wall near his head; he stopped the old man and ordered him to lie down again; he ordered Suza to tie the hands of the old man at his back and also to tie his legs; they continued searching the trunks and they were able to take ₱270.00 cash, coins and paper money of different denominations, one pair of silver earrings, one gold-plated ring, and one comb crowned with copper; they then proceeded at the porch of the house and called Ang-angan by whistling at him; once on the ground they divided equally the cash money they looted, and the other articles they seized in the house were thrown away; when they left the house the old man still tied and they proceeded southeast toward the barrio road of Balingaoan; he then took off the army fatigue uniform with the PC insignias on the collar of the shirt and delivered it together with the carbine he was carrying to Ang-angan, telling the latter to hide it and he will return for them later; that the carbine presented to him for identification was the same carbine which he carried on the night of the robbery and he had no license or permit to possess the same; that his share of the loot was all spent by him and that the army fatigue uniform and PC insignias were secured by him from a certain Jose Calalang of Orense, Narvacan, Ilocos Sur.

The statement of Gavino Manzano was sworn to before mayor Alejandro Samonte. Mayor Samonte declared that Manzano confirmed the truth of the facts in the statement and it was signed by Manzano voluntarily.

After the prosecution had concluded presenting the evidence against Ang-angan and Manzano, counsel for Ang-angan asked for time to file a written memorandum for the dismissal of the case. In the motion, the principal ground relied upon was that the identity of the accused has not been duly proven. It is stated in the brief of Manzano that he did not file a motion to dismiss. The record shows that when the trial was resumed for the presentation of evidence of the defense, counsel for Manzano waived the right to present any evidence on behalf of his client.

In the appeal of Manzano, the testimony of complainant Aurelio Pascua as to the identity of this appellant is assailed. It is argued that Manzano should be acquitted because the said testimony is insufficient and it suffers from contradictions and improbabilities. Appellant likewise urges this Court to grant a new trial on the alleged ground that the lawyer who represented him at the trial in the lower court was negligent and incompetent. And the probative value of his extrajudicial confession, Ex-

hibit A, is impugned on the alleged ground that it is not corroborated by evidence of the *corpus delicti* or assuming that it is so corroborated there are indications that the said confession was extracted from the appellant through force.

As to the identity of appellant Manzano as one of the perpetrators of the crime in question, we find ample and sufficient evidence. The testimony of the offended party, Aurelio Pascua, has adequately established this point. Without mincing words, this witness had declared that three persons one of whom presented himself as a PC soldier called on him on the night of the robbery and when he opened the door of his house to them they proceeded to ransack his dwelling and divested him and his sister of cash and valuables. He recognized Manzano as one of the culprits, and he enjoyed the opportunity of so recognizing him, although he did not know his name at the time, because Manzano was unmasked, it was a moonlit night and the house and its immediate surroundings were illuminated by a lamp placed near the window of the house. The fact that Aurelio Pascua could not state the name of appellant Manzano when his affidavit was taken on March 8, 1952 or two days after the commission of the robbery has been satisfactorily explained and the same does not detract from the evidence of the prosecution anent the identity of appellant Manzano. Aurelio Pascua declared that the first time he saw Manzano was on the night of March 6, 1952 when the robbery was committed, and that although he did not know his name he could identify him if he saw him again, which he did upon their next meeting. Identification of the offender is not to be understood as being able to know his name at the time of seeing him at the place of the commission of the crime. The important thing is the capacity and ability to recognize the culprit as the perpetrator of the crime and to distinguish him from other persons. When such capacity and opportunity for recognition is present, the evidence of identification is deemed sufficient even if, as happened in the case at bar, the name of the particular person recognized to be the criminal is known at a later time.

Appellant makes much of the absence of any evidence of the prosecution tending to show that Aurelio Pascua greeted the three persons who called on him on the night of March 6, 1952, pointing out that if Pascua did not make the expected salutation the deducible inference is that he did not recognize the offenders. Appellant Manzano cannot reasonably expect the offended party to greet him, considering that it was the first time that they met. He, however, inquires why notwithstanding the fact that Ang-angan was known to Pascua there was not the usual

greeting. The absence of the salutation is explained by the fact that the perpetrators did not give the victim any opportunity to accord them the desired amenities. Before Pascua could utter a word, they rushed to his door and asked him to lie down on the floor. Thereafter, they proceeded to ransack the house for money and valuables. Even if Pascua had wanted to greet them, he could not have done so under the circumstances.

A significant fact which bears pertinence to the question of Manzano's identity is the patent concurrence of declarations among witnesses from both camps as to the PC uniform and insignias worn by appellant Manzano. In his sworn statement, Exhibit A, the merits of which will be discussed presently, Manzano admitted having donned the PC attire complete with cap and insignias on the collar of his shirt on the night of March 6, 1952. And Aurelio Pascua likewise declared that one of the men who called on him on March 6 presented himself as a PC soldier. Such agreement of evidence on the fact that Manzano wore PC uniform on the night of the commission of the crime, bears heavily on his identification. By assuming the person of an officer of the law, he had betrayed himself and had given whomsoever would see him a certain clue by which to identify and distinguish him from other persons.

We now consider the probative value of appellant's sworn statement, Exhibit A. According to the appellant, the surrounding circumstances of the execution of this piece of document are such as warrant disregarding the veracity of its contents. We have examined the statement carefully, and we found that it is replete with details such as no one except the affiant could have reasonably furnished. Mayor Samonte declared that the affidavit was sworn to before him voluntarily, and if it be considered that official duties are presumed to have been regularly performed, the claim of the appellant that his sworn statement was extracted by means of force loses its value, especially when he has absolutely no evidence to show the alleged duress or maltreatment. Be that as it all may, the affidavit, Exhibit A, is hardly necessary for the conviction of the accused in view of the fact that he has been positively identified and, contrary to the claims of the appellant, the *corpus delicti* which consists in the undisputed fact that Aurelio Pascua and his sister were robbed on March 6, 1952 has been duly established.

Appellant puts his former lawyer to task and contends that a new trial should be granted because his lawyer was incompetent and negligent. From the mere fact that Manzano's lawyer saw fit not to present evidence on behalf of his client, it cannot be inferred that said attorney was

negligent, incompetent or has abandoned the cause of his client. The reasonable presumption is that the lawyer adhered to his sworn duties and if he decided to abstain from presenting evidence on behalf of his client it was because he honestly believed that there was no necessity of so doing. At any rate, we are of the opinion that the failure of the appellant's lawyer to present evidence on his client's behalf, assuming it for the sake of argument to be an act of negligence or incompetence, cannot, under the facts of the case, be considered as a valid ground for a new trial. If the appellant is allowed to present evidence on a trial de novo, he cannot possibly go outside of denying the imputation against him and impugning the contents of his sworn statement, Exhibit A. Appellant's denial would not suffice to overcome the evidence of the prosecution positively identifying him as one of the perpetrators of the robbery. Even if the veracity of the statements in Exhibit A were successfully impugned, it would avail the appellant nothing, for, as we said, there are other evidence, apart from said confession, which strongly sustains the judgment of his conviction. Considering, therefore, that the evidence which the appellant desires to present in the new trial would not alter the result, a trial de novo would not only be purposeless but it would also serve to hinder an expeditious administration of justice and entail unnecessary expenses.

WHEREFORE, the judgment apppealed from is hereby modified as follows: On reasonable doubt as to appellant Pedro Ang-angan's identity, he is hereby acquitted of the crime charged with proportionate costs *de oficio*. Appellant Gavino Manzano is declared guilty beyond reasonable doubt of the crime charged, and as the sentence imposed upon him by the lower court is in accord with the evidence and the law the same is affirmed in this instance with proportionate costs against him. As thus modified, the decision subject of the present appeal is affirmed.

IT IS SO ORDERED.

*Natividad* and *Sanchez, JJ.*, concur

*Judgment modified.*